



An
Bord
Pleanála

Inspector's Report PL15.248738

Development	Filing of lands with 96,000 tonnes of waste, entrance and office.
Location	Bolies, Kilsarin, County Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	16/743
Applicant(s)	Barry Connolly
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Frank McArdle
Observer(s)	Martin Wayte William Lyons
Date of Site Inspection	19 th January 2018
Inspector	Hugh Mannion

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1.0 Site Location and Description

- 1.1. The site is irregularly shaped has a stated area of 2.07ha. It is part of, and enclosed within, a larger landholding located in the rural townland of Bolies, in mid-County Louth. The site is a former landfill which appears to have been abandoned a number of years ago and the site is now in use by a local gun club for clay pigeon shooting (permitted under appeal reference PL15.241731). The site is crisscrossed by a number of footpaths and the surface is very uneven. Occasionally what appears to be discarded builder's rubble/old concrete slabs protrude from the earth and there are some areas of bare ground and standing water. Areas of the site have become very overgrown principally with gorse and other self-seeding native species. There are dense patches of regenerating woodland and the roadside boundary along the northeast and that on the south west are particularly dense. The appeals make the point that there is a lake/pond outside the site but within the landholding on the western/north western boundary but this waterbody may be very shallow and it appeared overgrown/obscured by rushes at the time of my site visit. The application site is separated from that waterbody by a post and wire fence and some self-seeding vegetation. The site access is in the south-eastern section of the landholding onto a third class road which is without a median line. Close to the access is a porta-cabin and on the cabin's northern elevation a number of 'porta-loos', close by and a little to the west is a large shipping container. In this area the earth is bare and appears to be in relatively frequent use for parking but was empty at the time of my site visit.
- 1.2. The area is characterised by rolling/hilly landscape crisscrossed by a network of roads. Immediately north of the landholding of which the site forms part is a third class road which passes under both the M1 and the Dublin/Belfast railway to link the village of Kilsaran to the east to Strabannon village to the west. Another third class road runs along the eastern boundary of the site and links the Kilsaran/Strabannon road to a junction with R132 (former N1 Dublin/Belfast) at 'Mullins Cross' about 1.5kms to the southeast of the application site. The general area is accessible from the M1 via motorway exit 14.

2.0 Proposed Development

- 2.1. The proposed development comprises the filling of the site with 96,000 tonnes of suitable waste comprising stone, concrete and soil over 4 years, the provision of a new vehicular entrance, temporary office accommodation, truck washing area and associated works at Bolies, Kilsaran, Castlebellingham, County Louth.

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted permission subject to 12 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report recommended a grant of permission as set out in the manager's order.

Initially the planning authority sought further information as follows;

- Submission of an AA screening report.
- Details of the treatment of waste water from the proposed temporary office accommodation.
- Submit a drawing detailing the boundary of the works in relation to the wetland on site.
- Submit a Flood Risk Assessment.

3.2.2. Other Technical Reports:

The **Infrastructure Section's** Report (dated 17th November 2106) stated no objection to the proposed development subject to conditions.

The **Heritage Officer's** report commented that the wetland adjoining the site is of moderate, local importance and that the application site is of very little wildlife interest.

4.0 Planning History

4.1. Permission was refused under PL15.225165 for a materials recovery facility comprising a portacabin, 2. no. weigh bridges, recovery depot, landscaping and all associated site development works on the current site.

1. The proposed development is located in a rural area designated in the current development plan for the area as Development Control Zone 5, with an objective to protect and provide for the development of agriculture and sustainable rural communities and to facilitate sustainable local development and/or developments of strategic regional or national importance. Having regard to the length of time which the previous waste related use of the site has

been abandoned, the existing facilities in a zoned and serviced commercial area and the overall policies and objectives of the county development plan and the regional Waste Management Plan, it is not considered that the proposed waste recovery facility is of strategic importance or that it is justified to locate it in a relatively unspoilt rural area. The proposed development would, therefore, seriously injure the amenities of this rural area, would be contrary to the zoning designation of the site and the policies and objectives of the development plan and would be contrary to the proper planning and sustainable development of the area.

2. The site is located in a rural area with a minor road network which is seriously substandard in terms of width and alignment with regard to the proposed level of increased traffic by commercial vehicles. The proposed development would, therefore, endanger public safety by reason of traffic hazard and

obstruction of road users.

- 4.2. Permission was granted under PL15.241731 for clay pigeon shooting on site on Sundays.

5.0 **Policy Context**

5.1. **Development Plan**

- 5.2. The site is designated 'Development Control Zone 5' in the Louth County Development Plan 2015 to 2021. The objective in areas so designated is "To protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance. Critical infrastructure projects of local, regional or national importance will also be considered within this zone".

- 5.3. The Eastern Midland Region Waste Management Plan 2015 to 2021 is the relevant Waste Management Plan for County Louth and 8 other midland/eastern counties. The Waste Management Plan (policy E8 in Chapter 16) supports the development of disposal capacity for the treatment of hazardous and non-hazardous waste at existing landfill facilities in the region subject to appropriate statutory approvals being granted in line with the appropriate environmental protection criteria. The Plan (objective E11) also "supports the consideration of appropriate alternative land uses at authorised inactive landfills..." subject to certain conditions. Section 16.4.4 of the Waste Management Plan makes the point that backfilling of inert waste may be authorised through waste permit systems.

5.4. **Natural Heritage Designations**

See Appropriate Assessment Screening below.

6.0 The Appeal

6.1. Grounds of Appeal

- There has been little development on this site since 1984, the use as a waste facility has been abandoned. The proposal materially contravenes the agricultural zoning of the site.
- The Board previously refused permission for landfill on this site under appeal reference PL15.225165 and the reasons given for refusal, especially vehicular traffic on an inadequate road network, are still valid.
- The local road network is used for agricultural vehicles serving the tillage farming in the area. The road network is inadequate to accommodate additional development related traffic.

6.2. Applicant Response

- It is proposed to fill the site with concrete, stone and soil over a period of four years to the original ground level. When complete the site will be covered in topsoil and the structures related to the use as a landfill will be removed.
- The site is zoned for the development of agriculture in the current Louth County Development Plan. The site is a former quarry and is incapable of such use at present. The proposed works will facilitate a use compatible with the County Development Plan.
- The works do not require an EIS. An AA screening report was submitted which concluded that the proposed development has no capacity to impact on European sites.
- The site is located 4kms from the M1 and 2.42 from the former N1 Dublin/Belfast road. There will be 5 lorries and 2 cars entering the site daily. The road network is adequate to accommodate this additional traffic loading.

6.3. **Planning Authority Response**

- The planning authority did not comment on the appeal.

6.4. **Observations**

- The road network is incapable to accommodating the lorry movements generated by the proposed development.
- The Bog Road and Bolies Road are too narrow to accommodate passing cars.
- The application may impact on wild birds.
- The site was previously a municipal dump which may contain hazardous materials.

6.5. **Further Responses**

There are no further responses.

7.0 **Assessment**

7.1. The principal matters to be considered are; the nature of the application, local planning policy, road safety, wastewater disposal, environmental impact assessment screening, and appropriate assessment screening.

7.2. **Nature of Application**

7.3. The application states that the development is subject to a Waste Facility Permit but there is no record of a waste permit application on Louth County Council's on-line register of waste facility permits for the site. I am satisfied that this application for permission may be determined as a standalone matter which will not relieve that applicant/developer from additional responsibilities under the Waste Management Acts.

7.4. **Development Plan Policy**

- 7.5. The site is designated 'Development Control Zone 5' in the Louth County Development Plan 2015 to 2021. The objective in areas so designated is "To protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance. Critical infrastructure projects of local, regional or national importance will also be considered within this zone". The applicant makes the case that the reinstatement of the site would facilitate the future use of the lands for agriculture. Having regard to the present use of the site for clay pigeon shooting, to its previous quarrying and, possibly some landfill, its low ecological importance as commented upon by the planning authority's Heritage Officer and its inability to sustain agricultural activity in its present state I conclude that its return to agricultural use having been filled would accord with the landuse designation set out in the County Development Plan for the site and the wider area.
- 7.6. The Eastern Midland Region Waste Management Plan 2015 to 2021 is the relevant Waste Management Plan for County Louth and 8 other midland/eastern counties. The Waste Management Plan (policy E8 in Chapter 16) supports the development of disposal capacity for the treatment of hazardous and non-hazardous waste at existing landfill facilities in the region subject to appropriate statutory approvals being granted in line with the appropriate environmental protection criteria. The Plan (objective E11) also "supports the consideration of appropriate alternative land uses at authorised inactive landfills..." subject to certain conditions. Section 16.4.4 of the Waste Management Plan makes the point that backfilling of inert waste may be authorised through waste permit systems.
- 7.7. A point was raised previously that quarrying on this site had been so long abandoned that that use could not be relied upon to imply a favourable view of an application for re-use of the site for filling with soil/rock/concrete. I agree with that point but would also note that the present application can rely on its own merits without reference to previous established or permitted land uses on site.
- 7.8. I conclude therefore that there the proposed use does not materially contravene the County Development Plan nor does it contravene the waste management policy for the region set out in the Eastern Midland Region Waste Management Plan 2015 to

2021 and, subject to the matters dealt with below, that the proposed development accords with the landuse policy framework for the area.

7.9. **Road Safety**

- 7.10. The appeal makes the point that the local road network is inadequate to accommodate additional traffic and that it accommodates significant agriculture related traffic already.
- 7.11. It is the case that the road network in the immediate vicinity of the site is poor. The sections from the intersection with the R132 (former N1) south of the site to the 'T' junction north of the site are poor in width and vertical and horizontal alignment but this is a relatively sparsely populated rural area where the road network reflects the relatively lower number of road users. The application includes a site plan which indicates a new site entrance northwest of the existing site entrance which is closer to the south-eastern end of the site. The planning authority's 'Infrastructure Section' reported no objection on traffic safety grounds and stated that a condition requiring the provision of a revised site entrance as provided for in the application should be applied in a grant of permission.
- 7.12. In the previous case (PL15.225165) the application projected 80 truck trips into and out of the site each day but the present application proposes a much less intensive use of the site – there is no recovery/recycling element to the present application. The application states that there will be five lorries and two cars accessing the site daily. I consider that this additional traffic loading on the local road network will not materially impact on the safety or carrying capacity of the network and subject to provision of a revised entrance and appropriate warning signage I conclude that the proposed development will not endanger public safety by reason of traffic hazard.
- 7.13. The planning authority's Infrastructure Section's report sought a bond to ensure repair and maintenance of the public road in the immediate vicinity of the site. Having regard to the nature of the road network and the nature of the proposed development I consider this is reasonable and attach a condition requiring the developer to lodge security with the planning authority for the satisfactory maintenance and repair of the public road in the vicinity of the site (draft condition 9).

7.14. **Wastewater Disposal**

7.15. The planning authority raised the issue of disposal of foul effluent arising within the site. The applicant responded that foul effluent will be disposed off-site by a licenced contractor. This matter may be subject to an environmental management plan (draft condition 4).

7.16. **Environmental Impact Assessment Screening**

7.17. The application was not accompanied by an EIS. The planning authority did not screen for EIA whereas it did request a AA screening report. Nonetheless it appears that the application is for an activity to which Article 11(b) of Part 11 of Schedule 5 of the Planning and Development Regulations 2001, as amended, applies but does not exceed the threshold of 25,000 tonnes annual deposit rate specified in the class. This application was submitted to the planning authority prior to the 16th May 2017 and therefore the provisions of the new EIA directive (Directive 2014/52/EU) do not apply.

7.18. Where a development is within a class but does not exceed the threshold therein the application should be screened for EIA by reference to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 as amended and having regard to the EIS Guidance for Consent Authorities regarding Sub-Threshold Development (EPA 2003). There are three criteria which must be considered when screening for sub-threshold EIA. These are;

- (a) the characteristics of the proposed development,
- (b) the location/the environmental sensitivity of the area where the development is located, and
- (c) the characteristics of potential impacts.

7.19. The characterises of the proposed development are identified in the Regulations and the more applicable in this case is the size of the proposed development, the use of natural resources, production of waste, potential for pollution arising from the proposed development. It may be noted that the area covered by the application is relatively small - about 2ha, that the use of natural resources is limited to machinery fuel and the land area required for the infill by inert waste and that no additional waste will be produced. There is some potential for surface water run-off but having

regard to the material submitted with the application and appeal, and in particular the assessment of the site and adjoining wetland as being of relatively low ecological importance by the planning authority's Heritage Officer, I am satisfied that the site and the adjoining pond/wetland are not ecologically significant. Nonetheless it would not be desirable that soil/silt be deposited into the wetland/pond and I recommend a condition managing the process to avoid such an occurrence (see draft condition 3 below).

7.20. The location and the environmental sensitivity of the area where the development is located should be considered, *inter alia*, having regard to its landscape value, proximity to European sites, sea coast or populated areas. The site is in a relatively sparsely populated rural area about 6kms inland from the coast. The Strabannon-Braganstown pNHA is located east of the site and separated from it by the Dublin/Belfast rail line and the M1 motorway. The County Development Plan includes Map 5.5 as part of its landscape character assessment and the site is within the Muirhevna Plain which is described as of local importance in the plan. The Strabannon-Braganstown SPA (004091) is 1.5kmn from the site and upstream of the area within the catchment of the River Dee.

7.21. The third criterion is the characteristics of potential impacts arising from the proposed development. The present case will have very limited geographical and no transfrontier impact; the foreseeable impacts (for example traffic and visual landscape) will be limited.

7.22. Having regard to the above criteria I conclude that the proposed development is not likely to have significant effects on the environment and that submission of an EIS and carrying out of an EIA, therefore, is not necessary.

7.23. **Appropriate Assessment Screening**

7.24. Table 4.1 of the submitted appropriate assessment screening report lists the European sites for which potential impacts arise as;

- Strabannon-Braganstown SPA (004091), which is 1.5kmn from the site,
- Dundalk Bay SAC (000455) which is 4.5kms distant,
- Dundalk Bay SPA (004026) which is 4.5km distant,

- River Boyne and River Blackwater SAC (002299) which is 15kms from the application site.

- 7.25. The screening report states that there are no direct hydrological connections between the site and any of the identified Natura 2000 sites. The screening report specifically considers the Strabannon-Braganstown SPA (004091) and the Dundalk Bay SPA (004026) and sets out the conservation objectives for the sites. A bird survey was conducted on the site in winter 2016/2017 which recorded very little bird activity and, *inter alia*, on the basis of this survey it is concluded that the proposed development does not have the potential to impact on the favourable conservation status of the identified Natura 2000 sites. The drawings (see in particular drawing number 1621-P-01-C) submitted as further information distinguish between the pond within the applicant's ownership but outside the application site where no development is proposed, wetland within the applicant's ownership but outside the application site where no development is proposed and wetland within the application site where no development is proposed.
- 7.26. The screening report at table 5.1 sets out the likely direct, indirect and in-combination effects of the proposed development in relation to the two Natura 2000 sites (the Strabannon-Braganstown SPA (004091) and the Dundalk Bay SPA (004026)) for which potential effects were identified. The report concludes that there are no potential significant effects on any European site arising from the proposed development.
- 7.27. I carried out a walk over inspection of the application site and viewed the adjoining wetland/lake from the within the site boundary and observed no wetland bird species on the adjoining lands or within the application site. I have read the material submitted in connection with the application and appeal and the material published by the NPWS in relation to the Natura 2000 sites identified in the screening report submitted with the application. It is reasonable to conclude that on the basis of the foregoing that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Strabannon-Braganstown SPA (004091), the Dundalk Bay SAC (000455), the Dundalk Bay SPA (004026), the River Boyne and River Blackwater SAC (002299) or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

- 8.1. Having regard to the foregoing I recommend that planning permission be granted subject to the conditions set below.

9.0 Reasons and Considerations

- 9.1. The proposed development is located in an area designated in the Louth County Development Plan 2015 to 2021 to protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance. Having regard to the previous use of the site for quarrying, the modest scale of the proposed use and subject to compliance with the conditions set out below, it is considered that the proposed development would not endanger public safety by reason of traffic hazard or give rise to risk of water pollution and would, otherwise, be in accordance with the current County Development Plan and the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 2nd day of May 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. This site shall be used only for the development proposed, that is the

acceptance of inert material for use in land reclamation for agricultural purposes. Notwithstanding any exempted development provisions in the Planning and Development Regulations 2001, as amended, no other development shall be carried out on site save with a separate grant of planning permission.

Reason: In the interest of clarity and of environmental protection.

3. (a) Surface water run-off from the site shall not be discharged directly to any wetland or watercourse. All such water shall be trapped and directed to temporary settling ponds.

(b) The developer shall manage drainage in accordance with a drainage management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall incorporate a monitoring programme relating to control and management of water on the site.

Reason: In the interest of public health and to protect water quality.

4. The development shall be operated and managed in accordance with an Environmental Management System (EMS), which shall be submitted by the developer to, and agreed in writing with, the planning authority prior to commencement of development. This shall include the following:

(a) Proposals for the suppression of on-site noise.

(b) Proposals for the suppression of dust on site.

(c) Proposals for the bunding of fuel and lubrication storage areas and details of emergency action in the event of accidental spillage.

(d) Details of safety measures to include warning signs and stock proof fencing.

(e) Management of all landscaping and boundary treatment.

(f) Management of all human waste arising within the site.

Reason: In order to safeguard local amenities.

5. The proposed development shall operate between 0700 hours and 1800 hours, Monday to Friday and between 0700 hours and 1400 hours on Saturdays only. No activity shall take place outside these hours or on Sundays or public holidays.

Reason: In order to protect the amenities of property in the vicinity.

6. A wheel-wash facility shall be provided adjacent to the site exit, the location and details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety and convenience, and to protect the amenities of the area.

7. The new site entrance provided for in the plans and particulars submitted with the planning application shall be constructed to the satisfaction of the planning authority prior to commencement of importation of fill material into the site as permitted by this grant of planning permission.

Reason: In the interest of traffic safety.

8. Prior to the commencement of development, the developer shall submit and agree the following in writing with the Planning Authority:

- (a) A traffic management plan for the operations.
- (b) The material, content, design and location of metal advance warning signs which shall be erected on both sides of the site entrance.

These signs shall be maintained in good and clean condition and removed on completion of the land reclamation works.

Reason: In the interest of traffic safety and convenience.

9. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory maintenance and repair of the public road in the vicinity of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to such maintenance and repair. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be

referred to the Board for determination.

Reason: To ensure the satisfactory restoration of the site in the interest of visual [and residential] amenity.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Hugh Mannion
Senior Planning Inspector

30th January 2018