



An
Bord
Pleanála

Inspector's Report PL04.249314

Development

The importation of soil & stone for the raising of an agricultural field in order to improve the agricultural output of the field, the construction of a new temporary entrance and a new temporary haul road for the duration of the land improvement works. The entrance will be closed and the haul road removed once works are complete.

Location

Na Foithrí, Cúil Aodha, Maighchromth,
Co. Chorcaí.

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

17/5212

Applicant(s)

Seán Ó Luasa

Type of Application

Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal

Third Party v. Decision

Appellant(s)

Tomas Mullins

Observer(s)

None.

Date of Site Inspection

30th January, 2018

Inspector

Robert Speer

1.0 Site Location and Description

1.1. The proposed development site is located in Na Foithrí, Cúil Aodha, Maighchromth, Co. Chorcaí, approximately 3.2km southwest of the small rural settlement of Coolea and c. 7.3km southwest of the village of Ballyvourney, where it occupies a relatively remote and isolated position within a rural valley in the foothills of the Derrynasaggart Mountains. The surrounding area is characterised by a mountainous and upland landscape with the lower lands interspersed by intermittent instances of one-off housing and farmsteads. The site itself has a stated site area of 1.276 hectares, is irregularly shaped, and presently comprises a series of agricultural fields bounded by a tributary of the Sullane River to the north and west. Access to the site is obtained via a series of minor local roads with the final approach to the site over a particularly narrow section of tertiary roadway. It was also observed during the course of my site inspection that multiple works were ongoing throughout the wider area and along the surrounding road network in association with the development of the Grousemount Wind Farm etc.

2.0 Proposed Development

- 2.1. The proposed development involves the raising of the ground level of an agricultural field through the importation of 16,242m³ of fill material comprising inert soil, rock and topsoil in order to improve the agricultural output of the field in question. The proposal also includes for the construction of a new temporary entrance onto the public road and the provision of a temporary haul road for the duration of the land improvement works. It is anticipated that the proposal will result in 1,600 No. loads of material being delivered to the site over a maximum of 5 No. years. Upon completion of the works, the temporary entrance will be closed, the haul road removed, and the lands seeded and returned to agricultural use.
- 2.2. Whilst the initial proposal included for the erection of a 1m x 1m earthen bund along the perimeter of the fill area and the further maintenance of a 5m buffer between the fill area and the floodplain, the amended proposals submitted in response to a request for further information have substituted the earthen bund with a silt fence to be erected along the site boundary whilst provision has also been made for a 10m buffer between the fill area and the silt fence.

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of a response to a request for further information, on 13th September, 2017 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 18 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Prohibits any interference with bridging, draining, or culverting of any watercourse, its banks or bankside vegetation. The applicant / developer is further required to obtain the approval of Inland Fisheries Ireland in relation to any proposed works within watercourses either adjoining or within the site prior to the commencement of any activities on site.

Condition No. 3 – Limits the number of deliveries to a maximum of 12 No. loads per day and requires a written record to be maintained of the time, date and approximate tonnage of each delivery (it is further stated that the aforementioned record may be subject to periodic inspection by the Local Authority).

Condition No. 4 – Requires the erection of fences, prior to the commencement of development, in order to ensure that all buffer zones are maintained, unless otherwise agreed in writing with the Local Authority.

Condition No. 5 – Refers to the construction of a silt fence in lieu of the proposed earthen bund prior to the commencement of any other site works.

Condition No. 6 – Requires any storage of topsoil to be carried out within the confines of the application site and the proposed silt fence.

Condition No. 7 – Requires the provision of the following:

- A buffer zone of at least 10m between the fill area / silt fence and the floodplain.

- A buffer zone of at least 21m between the fill area / silt fence and the watercourse.

Condition No. 8 – Requires a 5m wide buffer zone to be maintained at existing ground level from all adjacent boundaries / hedgerows and mature trees and prohibits the deposition of material within this area. Furthermore, all fill material is required to slope gently (as per the Planning Authority's requirements) to existing ground level at the edge of the site.

Condition No. 9 – Prohibits any storage of fuels / oils on site and requires any refuelling of vehicles to be undertaken in a designated area away from aquatic zones.

Condition No. 10 – Refers to the retention of mature trees and hedgerows.

Condition No. 11 – Refers to noise emission levels.

Condition No. 12 – Requires the implementation of adequate measures to prevent any undue noise, fumes, dust, grit, untidiness or other nuisances arising during the course of the works which could have a detrimental impact on either the amenities or environment beyond the site boundary. Furthermore, in the event of an unacceptable increase in noise levels etc., the permit holder will be required to abide by the Local Authority's abatement requirements, which may include the immediate cessation of operations.

Condition No. 13 – Refers to the maintenance of existing roadside drainage arrangements.

Condition No. 14 – Refers to existing roadside drainage and requires the new entrance to be designed and constructed in such a manner as to ensure the uninterrupted flow of surface water runoff from the roadway.

Condition No. 15 – Refers to the maintenance of public roads and footpaths in the vicinity of the proposed development site.

Condition No. 16 – Requires any spillages on the public road arising as a result of the proposed development to be cleaned by the developer as the need arises or when requested to do so by the Planning Authority.

Condition No. 17 – Requires the site to be seeded and returned to beneficial agricultural use as soon as is practicable following completion of the waste activities.

Condition No. 18 – Requires the payment of a special development contribution in the amount of €4,200 towards works proposed to be carried out to Local Road No. L-7404-0.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report noted the particulars of the proposed development, the site context, the contents of a third party submission, and the technical reports received in respect of the application, and subsequently recommended that further information should be sought with regard to a number of items.

Following the receipt of a response to a request for further information, a further report was prepared which noted the contents of the other technical reports compiled in respect of the subject proposal and recommended a grant of permission, subject to conditions.

3.2.2. Other Technical Reports:

Area Engineer: States that whilst the surrounding road network is adequate to accommodate the proposed development, it tends to deteriorate quickly during periods of concentrated HGV traffic. By way of further detail, it is also noted that the cabling works to connect the Grousemount Wind Farm to Caherdowney are ongoing and that the relevant contractor is seeking opportunities in the locality to dispose of excavated material. The report proceeds to state that Local Road No. L-7404-0 is in a 'fair to poor condition' and that sections of the roadway to the southwest of the proposed entrance arrangement have recently been improved as part of the aforementioned cabling works. It subsequently recommends the imposition of a

special development contribution in the amount of €4,200 towards road improvement works and further states that, given the condition of the roads in the area, deliveries to the site should be limited to 12 No. (20 tonne) loads per day.

With regard to the flooding implications of the proposed development, it is noted that the area to be infilled generally lies outside of 1 in 1,000 year (fluvial extreme) floodplain as identified in the Draft Preliminary Flood Risk Assessment compiled by the Office of Public Works and that the edge of the fill area has been set back 10m from the identified flood extent. In respect of the two instances where the works area is shown as extending into the floodplain, it is stated that the first of these should be pulled back behind the flood extent whilst the second location at the proposed site entrance would appear to involve an error in the PFRA mapping as the existing ground level at this location rises to existing road level.

In relation to the submission received from IFI and the concerns raised therein as regards haphazard development in the floodplain, the report of the Area Engineer has suggested that the IFI may not be aware of the Draft PFRA mapping as this was not referenced in the planning application.

In respect of the 'Screening Statement' for the purposes of Appropriate Assessment, it was noted that although this document referred to a 1m x 1m bund around the site area, no such construction was shown on the submitted site sections, whilst the planning application had not been accompanied by the Flood Risk Assessment referenced in the screening statement.

The report proceeds to state that any proposal that would impede or reduce the existing floodplain would be unacceptable and, therefore, the accurate identification of the current flood extent line would be vital to the assessment of the subject application. Accordingly, it was recommended that the applicant should be required to confirm the accuracy of the flood extent shown and to submit a copy of the FRA referenced in the Appropriate Assessment Screening Statement.

By way of further commentary, the report also acknowledged the need for licensed areas suitable for the disposal of material given the scale of development proposed in the locality. It further stated that the condition of the surrounding road network serves to limit the availability of areas suitable for such disposal activities and that

any development which would affect or reduce existing floodplains would be equally unacceptable.

In closing, the report concludes by requiring the submission of the Flood Risk Assessment referenced in the Screening Statement whilst it was also recommended that a suitably qualified consultant should confirm that the flood extent as detailed in the Draft PFRA is accurate and that the proposed fill area will be set back at least 10m beyond same.

Environment: An initial report recommended that further information should be sought in respect of a number of items, including the material types and the respective volumes of same to be imported to the site, the measures to be implemented in order to prevent erosion and / or runoff both before and during the construction phase of the development, the requirement to provide buffer zones between the works area, the floodplain and any watercourses, and details of any preliminary preparatory works which have been undertaken with regard to the removal and / or storage of topsoil and the bunding of watercourses.

Following the receipt of a response to a request for further information, a further report was prepared which stated that provided the proposed advance works were implemented in full there was no objection to the proposed development on environmental grounds, subject to conditions.

Heritage Unit: An initial report noted the site location approximately 6.8km upstream of the St. Gobnet's Wood Special Area of Conservation (Site Code: 000106) before concluding that the proposed development would have no significant impact on any Natura 2000 site. It was also stated that the habitats proposed for removal as part of the subject proposal (i.e. 'Improved Agricultural Grassland' and 'Wet Grassland') were not considered to be of local biodiversity significance. However, it was subsequently noted that the application had not been accompanied by a flood risk assessment and that the submission of same was required by the Area Engineer. In addition, the erection of a 1m x 1m berm around the perimeter of the site was not considered to be suitable within a floodplain. The report subsequently recommended that the applicant should be requested to submit details for the installation of silt fencing along the riverside site boundary (outside of any flood risk zone) in lieu of the proposed earthen berm by way of further information.

Following the receipt of a response to a request for further information, a further report was prepared which noted that the revised site layout plan included for the erection of silt fencing outside of the flood risk zone, although it was considered that there should also be a buffer zone with a minimum width of 10m between the fill area / silt fence and the floodplain with a further buffer of at least 21m between the fill area / silt fence and the watercourse. This report subsequently concluded by stating that the proposed development would not have any significant impact on The Gearagh SAC / SPA, local biodiversity, or any annexed species and that both the Environment Section and the Area Engineer had recommended the attachment of sufficient conditions to protect water quality during the infilling works.

Engineering: Following consideration of the applicant's response to the request for further information, this report noted that the submitted drawings had confirmed the accuracy of the flood extent relative to the proposed fill area and that provision had been made for a 10m separation buffer between the respective areas. It was further noted that it had been asserted that the proposed haul road would remain at existing field level and thus would not have any impact on the floodplain. The report subsequently concluded by recommending a grant of permission, subject to conditions, including a requirement to pay a special development contribution towards works proposed to be carried out to Local Road L-7404-0.

3.3. Prescribed Bodies

3.3.1. *Inland Fisheries Ireland:* At the outset, this report makes the following comments:

- a) Details should be agreed between the applicant and the Local Authority as regards the manner in which it is proposed to ensure that soiled water runoff from the site will be prevented from entering adjacent watercourses.
- b) In the event of a grant of permission, only inert materials should be used to raise the ground levels.
- c) A fence should be erected in order to ensure the maintenance of a 5m buffer strip from all watercourses. This fence is to be erected prior to the commencement of any filling activities and no works should be carried out within 5m of any watercourse.

- d) A condition should be attached to any grant of permission to the effect that there is to be no interference with bridging, draining, or culverting of any watercourse, its banks or bankside vegetation, to facilitate the proposed development without the prior approval of IFI.

The report subsequently states that there are wider concerns with regard to the principle of permitting the raising of ground levels within what are predominantly low-lying sites and floodplains given that permits are being issued in a haphazard fashion and in the absence of any overall assessment in relation to:

- a) The impact of the removal (raising) of part of the floodplain on drainage and hydrology within individual catchments; or
- b) The percentage of the floodplain that can be removed in any given catchment without significant consequential hydraulic changes.

It is further stated that Inland Fisheries Ireland is of the opinion that the aforementioned criteria should be established as a matter of urgency and that any individual development proposal should be considered in the context of all previous applications within a catchment. The report then concludes by suggesting that the 100-year floodplain contour should be established in each case and that no lands below this contour should be filled.

3.4. Third Party Observations

A single submission was received from the appellant and the principle grounds of objection contained therein can be summarised as follows:

- The proposed development will have a detrimental impact on the flood regime of the surrounding area due to the displacement of flood waters which will exacerbate downstream flood events with consequential impacts on the objector's lands and the villages of Coolea and Ballyvourney.
- A buffer zone should be maintained between any development and those areas prone to flooding.
- Runoff from the proposed development may have a negative impact on water quality in the adjacent watercourse with a consequential detrimental effect on the aquatic environment, including fish species.

- The existing river is classified as having a 'high' status and therefore every effort should be made to ensure that the integrity of this watercourse is maintained.
- The proposed development will be accessed via a narrow substandard roadway which is unsuitable for the anticipated levels of HGV traffic.
- The site is served by a roadway which connects the villages of Coolea, Reinaree & Ballingearry and thus there are road safety concerns as regards the traffic impact of the proposed development
- The increased traffic volumes consequent on the subject proposal and other developments planned in the area will result in traffic congestion and will also give rise to a deterioration in the condition of the road network.

4.0 Planning History

4.1. On Site:

None.

4.2. On Adjacent Sites:

None.

4.3. Other Relevant Files:

PA Ref. No. 155991. Was granted on 4th April, 2016 permitting Tomas Mullins permission for the reclamation of land for agricultural use by filling a low lying area with imported fill at Scrahanagown, Coolea, Macroom, Co. Cork.

PA Ref. No. 166754. Was granted on 6th February, 2017 permitting Tomas Mullins permission to alter condition no. 2 of previous planning ref 15/5991 from "the maximum number of loads delivered to the site each day shall be 4 loads" to a maximum of 11 loads per day at Scrahanagown, Coolea, Macroom, Co. Cork (*N.B.* Condition No. 2 of this grant of permission imposed a limit of 6 No. loads per day with no more than 24 No. loads per week, Monday to Saturday).

5.0 Policy Context

5.1. National and Regional Policy

5.1.1. The *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* published by the Department of the Environment, Heritage and Local Government in November, 2009 introduce comprehensive mechanisms for the incorporation of flood risk identification, assessment and management into the planning process. The core objectives of the Guidelines are to:

- Avoid inappropriate development in areas at risk of flooding;
- Avoid new developments increasing flood risk elsewhere, including that which may arise from surface water run-off;
- Ensure effective management of residual risks for development permitted in floodplains;
- Avoid unnecessary restriction of national, regional or local economic and social growth;
- Improve the understanding of flood risk among relevant stakeholders; and
- Ensure that the requirements of the EU and national law in relation to the natural environment and nature conservation are complied with at all stages of flood risk management.

5.1.2. In achieving the aims and objectives of the Guidelines the key principles to be adopted should be to:

- Avoid the risk, where possible,
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

5.1.3. The Guidelines outline the need to identify flood zones and to categorise these according to their probability of flood events. Notably, these should be determined ignoring the presence of flood protection structures as such areas still carry a residual risk of flooding from overtopping or breach of defences and as there is no guarantee that the defences will be maintained in perpetuity.

5.1.4. A staged approach to Flood Risk Assessment is advocated with only such appraisal and / or assessment as is needed to be carried out for the purposes of decision-making at the regional, development and local area plan levels, and also at the site specific level. Stage 1 entails the identification of flood risk by way of screening of the plan / project in order to determine whether there are any flooding or surface water management issues related to the area or the site that may warrant further investigation. This is followed by Stage 2 (Initial flood risk assessment) which seeks to confirm the sources of flooding that may affect a plan area or site, to appraise the adequacy of existing information and to scope the extent of the risk of flooding which may involve preparing indicative flood zone maps. Where hydraulic models exist the potential impact of a development on flooding elsewhere and of the scope of possible mitigation measures can also be assessed. The third and final stage (Stage 3: Detailed flood risk assessment) aims to assess flood risk issues in sufficient detail and to provide a quantitative appraisal of potential flood risk to a proposed or existing development or land to be zoned, its potential impact on flood risk elsewhere and of the effectiveness of any proposed mitigation measures.

5.1.5. Chapter 3 of the Guidelines states that the key principles of a risk-based sequential approach to managing flood risk in the planning system are to:

- **Avoid** development in areas at risk of flooding;

If this is not possible, consider substituting a land use that is less vulnerable to flooding.

Only when both avoidance and **substitution** cannot take place should consideration be given to **mitigation and management of risks**.

- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.
- **Exceptions** to the restriction of development due to potential flood risks are provided for through the use of a **Justification Test**, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

5.1.6. It is a key instrument of the Guidelines to undertake a sequential approach in order to guide development away from areas at risk from flooding such as through the use

of flood zones and the vulnerability of different development types, however, it is recognised that several towns and cities whose continued growth and development is being encouraged (through the National Development Plan, Regional Planning Guidelines etc.) in order to bring about compact and sustainable urban development and more balanced regional development, contain areas which may be at risk of flooding. Where a planning authority is considering the future development of areas at a high or moderate probability of flooding that would include types of development that are inappropriate in terms of their vulnerability, the ‘Justification test’ set out in Box 5.1 of the Guidelines should be employed.

- 5.1.7. The vulnerability of development to flooding depends on the nature of the development, its occupation and the construction methods used. The classification of different land uses and types of development as highly vulnerable, less vulnerable and water-compatible is influenced by various factors including the ability to manage the safety of people in flood events and the long-term implications for the recovery of the function and structure of buildings.

5.2. **Development Plan**

5.2.1. **Cork County Development Plan, 2014:**

Chapter 11: Water Services, Surface Water and Waste:

Section 11.6: *Flood Risks:*

WS 6-1: Flood Risks – Overall Approach

Take the following approach in order to reduce the risk of new development being affected by possible future flooding:

- Avoid development in areas at risk of flooding; and
- Where development in floodplains cannot be avoided, to take a sequential approach to flood risk management based on avoidance, reduction and mitigation of risk.

In areas where there is a high probability of flooding ‘Zone A’ it is an objective of this plan to avoid development other than ‘water compatible development’ as described in Section 3 of ‘The Planning

System and Flood Risk Management – Guidelines for Planning Authorities’ issued in November 2009 by DoEHLG.

In areas where there is a moderate probability of flooding ‘Zone B’ it is an objective of this plan to avoid ‘highly vulnerable development’ described in section 3 of ‘The Planning System and Flood Risk Management – Guidelines for Planning Authorities’ issued in November 2009 by DoEHLG.

Implement the recommendations of the South Western CFRAM study.

WS 6-2: Development in Flood Risk Areas

Ensure that all proposals for development falling within flood zones ‘A’ or ‘B’ are consistent with the Ministerial Guidelines – ‘The Planning System and Flood Risk Management. In order to achieve this, proposals for development identified as being at risk from flooding will need to be supported by a site specific flood risk assessment prepared in line with Paragraph 11.6.16 of this plan.

Where the planning authority is satisfied that it can be satisfactorily shown in the site specific flood risk assessment required under objective WS 61 that the proposed development, and its infrastructure, will avoid significant risks of flooding in line with the principles set out in the Ministerial Guidelines, then, subject to other relevant proper planning considerations, permission may be granted for the development.

Where the site specific flood risk assessment required under WS 61 shows that there are significant residual flood risks to the proposed development or its occupiers, conflicting with the approach recommended in the Ministerial Guidelines, it is an objective of this plan to, normally, avoid development vulnerable to flooding unless all of the following are satisfied:

- The development is within an urban settlement, targeted for growth under the National Spatial Strategy, Regional Planning Guidelines, and statutory plans.

- The development of the lands for the particular use or development type is required to achieve the proper planning and sustainable development of the urban settlement and, in particular:
 - Is essential to facilitate regeneration and/or expansion of the centre of the urban settlement;
 - Comprises significant previously developed and/or underutilised lands;
 - Is within or adjoining the core of an established or designated urban settlement;
 - Will be essential in achieving compact and sustainable urban growth; and
 - There are no suitable alternative lands for the particular use or development type, in areas at lower risk of flooding within or adjoining the core of the urban settlement.
 - The development is assessed not to have the potential to give rise to negative or adverse impacts on the integrity of Natura 2000 sites.

Chapter 13: Green Infrastructure and Environment:

Section 13.5: *Landscape*

GI 6-1: *Landscape:*

- a) Protect the visual and scenic amenities of County Cork's built and natural environment.
- b) Landscape issues will be an important factor in all land use proposals, ensuring that a proactive view of development is undertaken while maintaining respect for the environment and heritage generally in line with the principle of sustainability.
- c) Ensure that new development meets high standards of siting and design.
- d) Protect skylines and ridgelines from development.

- e) Discourage proposals necessitating the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.

GI 6-2: Draft Landscape Strategy:

Ensure that the management of development throughout the County will have regard for the value of the landscape, its character, distinctiveness and sensitivity as recognised in the Cork County Draft Landscape Strategy and its recommendations, in order to minimize the visual and environmental impact of development, particularly in areas designated as High Value Landscapes where higher development standards (layout, design, landscaping, materials used) will be required.

Section 13.7: Landscape Views and Prospects:

GI 7-1: General Views and Prospects:

Preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty as recognized in the Draft Landscape Strategy.

GI 7-2: Scenic Routes:

Protect the character of those views and prospects obtainable from scenic routes and in particular stretches of scenic routes that have very special views and prospects identified in this plan. The scenic routes identified in this plan are shown on the scenic amenity maps in the CDP Map Browser and are listed in Volume 2 Chapter 5 Scenic Routes of this plan.

GI 7-3: Development on Scenic Routes:

- a) Require those seeking to carry out development in the environs of a scenic route and/or an area with important views and prospects, to demonstrate that there will be no adverse obstruction or degradation of the views towards and from vulnerable landscape

features. In such areas, the appropriateness of the design, site layout, and landscaping of the proposed development must be demonstrated along with mitigation measures to prevent significant alterations to the appearance or character of the area.

- b) Encourage appropriate landscaping and screen planting of developments along scenic routes which provides guidance in relation to landscaping. See Chapter 12: Heritage Objective HE 46.

N.B. The proposed development site will be visible from Scenic Route No. 24 – *Local Road between Coolea and Coom: Views of the foothills of the Derrynasaggart Mountains, surrounding hills & the Sullane River* (Overall Landscape Value: High-Medium-High).

5.2.2. **Blarney / Macroom Municipal District Local Area Plan, 2016:**

Section 1: *Introduction*

Section 2: *Local Area Strategy*

5.3. **Natural Heritage Designations**

5.3.1. The following Natura 2000 sites are located in the vicinity of the proposed development site:

- The St. Gobnet's Wood Special Area of Conservation (Site Code: 000106), approximately 6.5km to the northeast
- The Mullaghanish to Musheramore Mountains Special Protection Area (Site Code: 004162), approximately 8.1km to the northeast.
- The Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365), approximately 8.1km to the northwest.
- The Kilgarvan Ice House Special Area of Conservation (Site Code: 000364), approximately 10.32km to the west.
- The Glanlough Woods Special Area of Conservation (Site Code: 002315), approximately 13.2km to the southwest.

- The Derryclogher (Knockboy) Bog Special Area of Conservation (Site Code: 001873), approximately 13.3km to the southwest.

6.0 The Appeal

6.1. Grounds of Appeal

- The decision of the Planning Authority to grant permission for the subject proposal is flawed on the basis that it relies on the total accuracy of the extent of fluvial flooding identified in the mapping compiled as part of the OPW's Preliminary Flood Risk Assessment which the Office of Public Works has advised is not reliable and should not be used in planning decisions. In this respect it is submitted that the Planning Authority's use of the aforementioned identification of the limit of fluvial flooding in this area in order to define the floodplain is completely unreliable and unfit for purpose.
- The subject site forms a valuable part of the floodplain which serves to aid in the protection of lands and homes downstream.
- The accompanying photographs demonstrate that both the haul road and the application site hold water above ground (ponding) after moderate rainfall. During periods of more intense / extreme rainfall (such as during yellow, orange and red weather status warnings), the subject site forms an important part of the floodplain which keeps water back from flowing downstream and into surrounding lands and properties, including the villages of Coolea and Ballyvourney. Any raising of ground levels in this area would have an adverse impact on downstream lands during a flood event.
- Notwithstanding the applicant's submission that the viability of his farm depends on him obtaining additional silage ground, a photograph taken on 1st September, 2017 (appended to the grounds of appeal) indicates that silage was previously cut and baled on the subject lands.
- Whilst the report of the Area Engineer dated 31st August, 2017 has stated that the proposed haul road will be at existing field level, this is contradicted somewhat by the Planner's Report dated 10th July, 2017 which refers to the site surrounds as being well below the level of the public road. In this respect

it is queried that if the site is well below the level of the roadway how will the haul road be maintained at existing field level. Moreover, Section 'A-A' clearly shows that the level of the haul road is to be raised.

- In the event that the haul road is maintained at current ground level, it would nevertheless involve the carrying out of construction works and would be a potential source of pollution and interference within a floodplain.
- In the Planning Authority's previous determination of PA Ref. No. 155991, the Area Engineer noted that the local road serving that site was in a '*very good condition*' and imposed a limit of 4 No. loads per day, however, in the subject application whilst the Area Engineer has described the local road serving the site as being in a '*fair to poor condition*' he has recommended the imposition of a limit of 12 No. loads per day. This is not a consistent pattern of decision-making.

In addition, it should be noted that whilst the Area Engineer required the submission of a traffic management plan in respect of PA Ref. No. 155991, no such details were required to be submitted as regards the subject proposal despite the application site being served by a similarly classed local road which is in a poorer condition.

- On the basis of the site measurements provided, it is questioned if the volume of material proposed to be deposited at this location (i.e. 16,242m³) would dramatically alter the site topography.
- The appellant concurs with the concerns expressed by Inland Fisheries Ireland in relation to the principle of granting permits to raise land levels within what are predominantly low-lying sites and floodplains, particularly as it appears that these permits are being approved in a haphazard manner with no overall assessment as regards:
 - The impact of the removal (raising) of part of the floodplain on drainage and hydrology within individual catchments; or
 - The percentage of the floodplain that can be removed in any given catchment without significant knock-on hydraulic changes.

- There are concerns with regard to the potential downstream flood impact of the proposed development on the appellant's lands.
- The proposed development gives rise to road safety concerns.

6.2. Applicant's Response

- The Board is referred to the accompanying copy of a site specific flood risk assessment that has been undertaken by Irish Hydrodata Ltd. on behalf of the applicant in response to the grounds of appeal. This report concludes that *'the proposed works do not impact the floodplain and do not increase the flood risk at the site or for downstream properties'*.
- The site specific flood risk assessment states that *'the model results also indicate that the majority of the site (99%) is more than 10m from the floodplain and thus meets the 10m buffer zone requirement of CCC [Cork County Council]. Approximately 130m² of the site, in the eastern corner adjacent to the haul road, does not meet the buffer requirement and should be excluded from infill'*. In this respect, the applicant is amenable to the amendment of the site boundary in order to ensure that the precautionary 10m buffer is maintained.
- There are concerns that the photographs supplied with the grounds of appeal are misleading and do not all relate to the application site (instead showing parts of the applicant's landholding that are unrelated to the subject proposal). Furthermore, it should be noted that several of the submitted photographs only show water ponding on site and not instances of flooding.
- The site specific flood risk assessment compiled by Irish Hydrodata Ltd. suggests that *'it is very possible that the fill could prove beneficial in retaining more water internally . . . thereby reducing peak runoff to surrounding lands'*.
- The purpose of the proposed development is to improve the agricultural output of the lands in question and it is considered that the photographs submitted with the grounds of appeal serve to confirm the poor nature of the land and thus support the need for the development.

- The provision of the proposed haul road will not require the alteration of ground levels at the site and will not impact on the floodplain.
- A silt fence will be installed at the boundary of the site (to include the haul road) in order to prevent surface waters containing suspended solids discharging from the site and posing a risk of pollution.
- With regard to the reference in the grounds of appeal to a similar development permitted nearby under PA Ref. No. 155991, the Board is advised that said development is operated by the appellant.
- The access arrangements to the proposed development site were discussed at length with the Area Engineer prior to the lodgement of the application.
- The Local Authority Area Engineer has determined that a delivery rate of 12 No. loads per day is appropriate.
- With regard to the proposed tonnage of material, the applicant engaged the services of an agricultural consultant to advise on how best to improve the site which subsequently resulted in the appointment of a surveyor who developed the drawings and calculated the volume of material. The altered ground levels are proposed simply to improve the agricultural output of the site and the lands in question will be restored to a field on completion of the works. Accordingly, it is unclear how the subject proposal will *'dramatically alter the topography of the site'*.
- All vehicle users at the site will be made aware of the requirement to obey the rules of the road and the need to operate in a safe manner.
- There are ongoing works pertaining to the construction of wind farm developments, road improvement works and one-off houses in the surrounding area and, therefore, there is a need for soil recovery sites such as that proposed. In this respect, it is submitted that the proposed development will serve to reduce traffic movements in the area and will also reduce the carbon footprint of the aforementioned developments.

6.3. Planning Authority's Response

None.

6.4. Observations

None.

6.5. Further Responses

6.5.1. Response of the Appellant to First Party Submission:

- Contrary to the applicant's assertions, it is submitted that the appellant's concerns are genuine and well founded.
- The lands in question form part of an area of floodplain / wetland and any raising of or interference with same will have a severe impact on the appellant's farm and access road.
- It is reiterated that the photographs submitted with the grounds of appeal show that silage has previously been cut from the lands in question. The subject lands are considered to comprise a viable level field that is used for agricultural purposes and which would be classed as a good field for the general area.
- The suggestion that the submitted photographs are misleading is rejected. They were taken to provide a clear picture of the lands and, where possible, contain landmarks to allow identification of the site location.
- The Board is referred to Section 2.34 of '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' which states the following:
'A major function performed by the floodplain and wetlands is to hold excess water until it can be released slowly back into a river system or seep into the ground until a storm subsides . . . Areas of floodplain and wetlands should, therefore, be recognised and preserved to the extent possible as natural defences against flood risks . . . safeguard areas of floodplain against development in both urban and rural areas.'
- Whilst the applicant has asserted that the haul road will not alter levels at the site, the original plans and particulars lodged with the application indicate that the route of the haul road is to be raised and no revised drawings have been submitted in this regard.

- It is acknowledged that the appellant operates a similar facility approved under PA Ref No. 155991 and details of same are in the public domain.
- Both the Local Authority Area Engineer and the applicant have stated that there is a need for developments such as that proposed in the wider area and, therefore, the provision of an additional facility will have no impact on the appellant's operation.
- The applicant has failed to address the appellant's concerns as regards the lack of a traffic management plan and the inconsistency in the decision-making of the Planning Authority.
- With regard to the submitted flood risk assessment:
 - This assessment relies extensively on the use of mapping and information derived from the Office of Public Works and the appellant's concerns in this regard have not been addressed.
 - The assessment uses countless phrases such as 'estimated', 'models' and 'example'.
 - Section 2.5 of the assessment states that *'no high flow river data [is] available for model calibration or validation purposes'*.
 - Section 1.2 states that *'only fluvial flooding is identified as a significant risk due to proximity of the Sullane to the site. Other potential sources will not impact the site . . .'*

In view of the foregoing, it is considered to be questionable whether the submitted flood risk assessment can be relied upon as an accurate analysis of the risks involved in the raising of the subject lands.

- The Board is referred to the following extract from the Office of Public Works Ballyvourney / Ballymakeera Flood Defence Scheme:

'The causes of flooding in the town are from the river itself, surface water flooding along the main street including backing up surface water mains, overland flood and localised flooding from a number of minor tributaries entering the Sullane River through the town from the north'

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- Flooding implications
- Traffic implications
- Visual impact / landscape considerations
- Appropriate assessment

These are assessed as follows:

7.2. **Flooding Implications:**

7.2.1. From a review of the available information, it is clear that there are various concerns raised in the grounds of appeal as regards the potential flooding implications of the proposed development given its proximity to a tributary of the Sullane River and the possible downstream impacts attributable to any loss of floodplain and the associated displacement of flood waters consequent on the proposed filling works. In this regard I would refer the Board in the first instance to the National Flood Hazard Mapping available from the Office of Public Works which does not record any flood events in the immediate surrounds of the subject site, although it must be conceded that whilst this mapping serves as a useful tool in highlighting the potential for flood events in a particular area, it is not definitive. Therefore, it is perhaps of greater relevance to consider the indicative mapping prepared by the Office of Public Works and published in 2011 as part of its Draft Preliminary Flood Risk Assessment. Notably, this mapping would appear to suggest that the lands to be raised will be located outside of the estimated extent of a 1 in 100 year fluvial flood event whilst the temporary haul road will extend across the identified floodplain, however, I would draw the Board's attention to the contents of Circular PL2/2014 as issued by the Department of the Environment, Community and Local Government on 13th August, 2014 which states that the Draft Indicative Preliminary Flood Risk Assessment Maps were prepared for the purpose of an initial assessment, at a national level, of areas of potentially significant flood risk and that *'the maps provide only an indication of areas that may be prone to flooding. They are not necessarily locally accurate and*

should not be used as the sole basis for defining Flood Zones, or for making decisions on planning applications'. This Circular further recommends that for the purposes of decision-making in respect of planning applications, a Stage II Flood Risk Assessment as set out in *'The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009'* should be undertaken where there are proposals for development in areas that may be prone to flooding.

- 7.2.2. In addition to the foregoing, I would advise the Board that the recently updated mapping prepared by the Office of Public Works and published in 2016 as part of its Draft Flood Risk Management Plan (compiled as part of the South-West Catchment Flood Risk Assessment and Management Study) provides no further details of flood events in the immediate surrounds of the application site.
- 7.2.3. Whilst I would concur with the appellant's concerns as regards placing an undue reliance on the mapping compiled as part of the OPW's Preliminary Flood Risk Assessment, the applicant has sought to address same by submitting a site specific flood risk assessment for the proposed development prepared by Irish Hydrodata Ltd. which has identified the relevant river catchments and estimated the peak flood values before utilising hydraulic river modelling to predict the extent of flood waters for a 1% AEP and 0.1% AEP flood event (with an allowance made for climate change). This report has concluded that the proposed fill area lies outside the predicted 1% and 0.1% AEP flood levels and thus can be considered to be located within Flood Zone 'C' (i.e. where there is a low probability of flooding) as defined in *'The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009'*. The FRA proceeds to state that the proposed fill area will achieve in excess of the 10m buffer zone from the 0.1% AEP flood level required by the Planning Authority, save for an area of c. 130m² located in the eastern corner of the site adjacent to the haul road which can be excluded from any infilling works (as a condition of any grant of permission). It has also been confirmed that the proposed haul road will not be raised above existing ground level and thus will not impact on floodplain storage.
- 7.2.4. Having considered the available information, including the site specific flood risk assessment submitted in response to the grounds of appeal, on balance, I am satisfied that, subject to suitable conditions (including a requirement to omit that part

of the fill area which will not achieve a separation of 10m from the predicted flood level), the proposed development will not give rise to any unacceptable flood risk.

7.3. **Traffic Implications:**

- 7.3.1. The proposed development site is accessed via a series of minor local roads with the final approach over a particularly narrow section of tertiary roadway (Local Road No. L-7404-0). In this respect it is of relevance to note that it is proposed to open a new entrance onto the adjacent roadway and to construct a temporary haul route within the site boundary parallel to same thereby limiting the overall distance over which traffic delivering material to the site will travel along Local Road No. L-7404-0. This new entrance arrangement would also seem to be preferable to any usage of the existing site entrance located further southwest given the inadequacy of the sightlines available from that entrance and the absence of any pull-in-areas / junctions in the immediate vicinity of same which would be sufficient to accommodate passing vehicles.
- 7.3.2. With regard to the overall traffic impact of the proposed development on the surrounding road network, it should be noted that permission was previously granted under PA Ref. No. 155991 along the roadway to the north of the application site for a comparably sized filling operation (max. 12,000 No. tonnes) and that the Planning Authority would appear to have been satisfied in that instance that the road network had sufficient capacity to accommodate the additional traffic volumes / types consequent on those works, subject to a limitation whereby a maximum of only 4 No. loads would be permitted to be delivered to the site per day (*N.B.* This was subsequently increased to 6 No. loads per day pursuant to PA Ref. No. 166754). In my opinion, parallels may be drawn between the subject proposal and that permitted under PA Ref. No. 155991 and in this regard it is of further relevance to note the localised road improvements related to the on-going construction of the Grousemount Wind Farm etc. and that the traffic impact of the proposed filling operation will likely be localised given the intention to draw material from the aforementioned wind farm site etc. However, in the interests of consistency, I would be inclined to limit the number of deliveries to the site to 6 No. loads per day in line with the Planning Authority's recent determination of PA Ref. No. 166754.

7.3.3. Whilst no specific details have been provided of the estimated tonnage of individual loads to be delivered to the site, the applicant has anticipated that the delivery of 16,242m³ of material to the site will require a total of 1,600 No. loads over a maximum of 5 No. years. In light of the foregoing estimates, I am inclined to suggest that the proposed timescale for the completion of the works is excessive given that 6 No. (10m³) loads per day over the course of a working week (incl. Saturdays) would likely result in the filling operations being completed within approximately one year. Whilst I would concede that the foregoing calculation assumes a regular supply of suitable fill material, given the stated intention of the proposal to aid in the disposal of material from works currently being undertaken in the surrounding area, the preference to avoid having to draw material from greater distances, and the desirability of ensuing that the works are completed within a reasonable timescale thereby reducing any prolonged impacts, I would suggest that the duration of the grant of permission should be limited to 3 No. years as this should provide adequate time to ensure the completion of the filling and levelling works in addition to the return of the lands to beneficial agricultural use.

7.3.4. In relation to the Planning Authority's imposition of a special development contribution in respect of 'proposed works' to be carried out along Local Road No. L-7404-0, I note that a similar condition was imposed on PA Ref. No. 155991 although it that instance it was expressly stated as being for the provision of 'future repairs' to a specified public road. In my opinion, it would seem reasonable to anticipate that the subject monies would also be intended to be used for repair purposes, and whilst the Board may deem it necessary to impose this levy, I would suggest that a condition assigning the developer responsibility for the full cost of repairs in respect of any damage caused to any adjoining public roadway arising from the works, whilst also requiring any damage to the road to be made good to the satisfaction of the planning authority, would be sufficient in this instance.

7.4. **Visual Impact / Landscape Considerations:**

7.4.1. In terms of assessing the visual impact of the proposed development it is of relevance in the first instance to note that the wider landscape type within which the subject site is located has been classified as '*Glaciated Cradle Valleys*' as per the landscape character mapping set out in the County Development Plan, 2014. Furthermore, it should be noted that whilst the site is not located within an identified

'High Value' landscape, it will be visible from Scenic Route No. S24 (Local Road between Coolea and Coom: Views of the foothills of the Derrynasaggart Mountains, surrounding hills & the Sullane River) with the views from same having been listed for preservation in the Development Plan pursuant to GI 7-2: 'Scenic Routes'.

7.4.2. Having conducted a site inspection, whilst I would concede that the proposed development will detract to some extent from the visual amenity of the surrounding area during the course of the filling operations, given the nature and limited extent of the works proposed, the temporary duration of the development, the visual impact already attributable to ongoing construction works both in the vicinity of the site and the wider area, and as the lands in question will be seeded and returned to agricultural use upon completion of the works (with the temporary entrance to be closed and the haul road removed), I am inclined to suggest that the proposed development will not unduly detract from the visual amenity or scenic quality of the wider area and that the topographical changes consequent on the proposal will have a negligible impact on the prevailing rural character of the site.

7.5. **Appropriate Assessment:**

7.5.1. From a review of the available mapping, including the Cork County Development Plan, 2014 and the data maps available from the website of the National Parks and Wildlife Service, it is apparent that although the proposed development site is not located within any Natura 2000 designation, there are a number of Natura 2000 sites within the wider area with the closest such sites being the St. Gobnet's Wood Special Area of Conservation (Site Code: 000106), approximately 6.5km to the northeast, and the Mullaghanish to Musheramore Mountains Special Protection Area (Site Code: 004162), approximately 8.1km to the northeast. Moreover, given the close proximity of the application site to a tributary of the Sullane River, consideration should also be given to the potential for possible downstream impacts. In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Objective No. HE 2-1: 'Sites Designated for Nature Conservation' of Chapter 13 of the Cork County Development Plan, 2014, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or

affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site.

Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

7.5.2. Having reviewed the available information, including the screening statement submitted with the application and the assessment of the proposal undertaken by the Heritage Unit of the Planning Authority, and following consideration of the 'source-pathway-receptor' model, including potential hydrological connectivity, it is my opinion that given the nature and scale of the development proposed (as amended in response to the request for further information), the site location outside of any Natura 2000 designation, the limited ecological value of the lands in question, the amended design proposals submitted in response to the request for further information, and the separation distances involved between the site and the closest Natura 2000 site, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of any Natura 2000 site.

7.5.3. Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site and, in particular, specific Site Code 000106, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the nature and extent of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health, would not seriously injure the amenities of the area or of property in the vicinity and would not, therefore, be contrary to the proper planning and 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 22nd day of August, 2017 and by the further plans and particulars received by An Bord Pleanála on the 24th day of October, 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. The permission shall apply for a period of three years from the date of this order. Following the expiration of this period, the importation of material to the site and operations on site shall cease, unless prior to the end of the period, planning permission shall have been granted for a further period.

Reason: Having regard to the nature of the development, and in order to expedite the works, the Board considers it appropriate to restrict the period of operations under this permission to three years.

3. The maximum quantities of inert soil and stone to be accepted at the site shall not exceed 16,242m³ in total over the period referred to in Condition Number 2 of this permission with the number of deliveries limited to a maximum of 6 No. loads per day.

Reason: In the interest of clarity and traffic safety.

4. The imported material to be deposited on the land shall comprise inert soil, stone and topsoil only and shall be levelled, contoured and seeded upon the completion of the works and protected until established.

Reason: In order to assimilate the development into the surrounding rural landscape, in the interest of visual amenity.

5.

- a) The imported material shall be deposited on that part of the site identified on Drg. No. TCE/DM17/104 (Proposed Topo Survey) received by the planning authority on the 22nd day of August, 2017, excluding that area coloured green in Figure 2.6 of the Flood Risk Assessment received by An Bord Pleanála on the 24th day of October, 2017.
- b) A minimum 10-metre-wide buffer zone shall be maintained between that part of the site to be filled and the modelled flood extent for a 0.1% flood event shown in Figure 2.5 of the Flood Risk Assessment received by An Bord Pleanála on the 24th day of October, 2017. No inert material shall be deposited in this area.

Reason: In the interest of clarity and in order to protect receiving waters.

6. Details for the provision of silt fencing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In order to protect receiving waters.

7. The importation of inert soil, stone and topsoil and the operation of associated machinery shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays, between the hours of 0800 and 1400 on Saturdays and not at all on Sundays, Bank or Public Holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of good traffic management and to protect the amenities of the area.

8. Details of road signage including advance warning notices and proposals for traffic management at the site entrance shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety.

9. The developer shall be responsible for the full cost of repair in respect of any damage caused to any adjoining public roadway arising from the construction works and operations and shall make good any damage to the road to the satisfaction of the planning authority.

Reason: In the interest of traffic management of the area.

10. During the construction phase of the proposed development, the noise level from within the boundaries of the site measured at noise sensitive locations in the vicinity, shall not exceed-

- a) an L_{Ar,T} value of 55 dB(A) between the hours of 0800 and 1900 from Mondays to Fridays, between the hours of 0800 and 1400 on Saturdays (excluding public holidays).
- b) an L_{Aeq, T} value of 45 dB(A) at any other time.

Reason: To protect the residential amenities of property in the vicinity.

11. During the construction stage, dust emissions shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergerhoff Gauge). Details of a monitoring programme for dust shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Details to be submitted shall include monitoring locations, the commencement date and the frequency of monitoring results.

Reason: To protect the residential amenities of property in the vicinity.

Robert Speer
Planning Inspector

31st January, 2018