



An
Bord
Pleanála

Inspector's Report ABP.301213-18

Development	A Waste Management Facility for the recovery of inert waste material for the purposes of land reclamation for agricultural activity.
Location	Garrynadur, Lispole, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	17/786
Applicant(s)	Allman Contracts Ltd.
Type of Application	Planning permission
Planning Authority Decision	Grant permission s.t. conditions
Type of Appeal	Third Party
Appellant(s)	Michael Horgan
Observer(s)	None.
Date of Site Inspection	22 nd July 2018
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1. The site is located in the townland of Garrynadur, approx. 350m to the west of Lispole on the Dingle Peninsula. The site is located directly opposite Lispole Holiday Cottages on the N86, Dingle to Tralee road. The N86 has been realigned at this location. This is a rural area which is predominantly in agricultural use. The site is located on the northern side of the road and at the northern end, slopes fairly steeply northwards towards the Owenalondrig River, and there is some scrub adjacent to the river. There are scenic views to the north towards the Slieve Mish Mountain range.
- 1.2. The site area is given as 3.98ha. The site is irregular in shape and has road frontage to the N86. It comprises two large fields which form part of a larger landholding/farm. There is an existing farmhouse and farmyard to the west of the site, which adjoins the road. At the time of my inspection I noted that the site had already been covered almost entirely by topsoil and stone.

2.0 Proposed Development

- 2.1. It is proposed to raise the surface of the ground by between 1.0m and 1.5m over the entire site. The site would be covered with inert waste material (soils) which would be imported onto the site from excavations associated with the N86 Road Improvement Scheme. It is stated that the purpose of the development is land reclamation for the purposes of improvement of agricultural land. The volume of material is stated to be 78,000 tonnes. It is proposed to maintain a buffer zone of 30 metres from the Owenalondrig River.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 5 no. conditions. These were generally of a standard nature. Condition 2 required the payment of a Development contribution of €11,310.00 in accordance with the terms of the General Development Contribution Scheme. Condition 3 stated that there should be no

conflict with the Road Improvement Scheme and Condition 4 sought measures to prevent any run-off or material deposition onto the public road.

Condition 5 reads as follows:

- (a) If any part of the site forms part of a flood plain, this area shall be maintained free from fill.
- (b) The buffer zone along the Owenalondrig River as shown on Drawing received on 11/8/17 shall be retained as an area free from fill. This area shall be fenced prior to fill commencing.
- (c) Existing vegetation along waters shall be retained.
- (d) There shall be no emissions of polluting nature to any water.
- (e) Adequate site control measures shall be implemented to effect pollution control.
- (f) All mitigation measures shall be put in place prior to commencement of site works.

Reason: To ensure that there will be no direct impact on surface waters or infill of any flood plain as a result of the development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report noted the location of the site in an area zoned as **Rural General** and designated within the line of **Protected Views and Prospects** as determined by the KCC CDP. It was noted that there is no recent history associated with the site. It was considered that the visual impact of the proposed development is low. Appropriate Assessment was ruled out due to the nature and scale of the project and the distances between the site and the Natura 2000 sites in the vicinity. An assessment of whether the proposed development qualified as a sub-threshold project in respect of EIA was also carried out in accordance with the criteria set out in Annex III of the Directive. It was concluded that the proposed development would not be likely to have any significant effects on the environment.

The Area Planner noted the submissions from third parties and other technical reports and made reference, in particular, to the submissions from the appellant, the IFI and the County Archaeologist. The observations from the appellant were noted but it was considered that these could be addressed by the condition suggested by the IFI. Furthermore, it was noted that the Biodiversity Officer had not raised objections. The Area Planner, however, considered that further information was required in respect of Archaeology and the volume of material to be imported. It was requested that an Archaeological Impact Assessment be submitted due to the proximity of the site to a recorded monument, namely a ringfort.

3.2.2. **Other Technical Reports**

Bio-Diversity Officer – No objection subject to conditions. It was noted that the site comprises a field of improved agricultural grassland and would not be classified as ‘wetlands’ (under amendments to Article 5 of P & D Regs). The proposed 30m buffer from the Owenalondrig River was noted. It was considered that given the distances from European sites in the vicinity, and or pNHAs, there was no likelihood of significant impacts of the designated sites.

County Archaeologist – the proposed development is located partially within the zone of archaeological potential/notification, as shown in the Record of Monuments and Places and Sites & Monuments Record around recorded monument Ke044 135, listed as a ringfort. Given the scale of the development, a full archaeological impact assessment, including pre-development archaeological testing if it is proposed to strip the site, should be requested.

Kerry National RDO – no objection subject to condition to ensure no conflict with N86 Road Improvement Scheme.

Fire Authority – no objection.

3.3. **Prescribed Bodies**

TII – no observations to make.

Inland Fisheries Ireland – IFI requires that there be no direct impact on surface waters or infill of any flood plains as a result of the development. It recommended that the following matters be addressed by way of conditions of any permission:

- If any part of the site forms part of a flood plain, this area should be retained free from fill and fenced.
- A 10m buffer zone along the Owenalondrig should be retained as an area free from fill, this area to be fenced prior to fill commencing.
- Existing vegetation along waters to be retained.
- There should be no emissions of a polluting nature to any water.
- Adequate silt control measures to be implemented to effect pollution control.
- All mitigation measures to be put in place prior to commencement of site works.

3.4. Third Party Observations

Michael Horgan, Lakes and Rivers of Kerry–

Concern expressed about the impact on the Owenalondrig River, and particularly on fish in the river, given that it is a salmonid river and an excellent trout river. The Regional Fisheries Board should be consulted. A 30m buffer zone is inadequate and who would police what goes on the site?

Concern was also expressed regarding the impact on the landscape and on tourism, and in respect of noise, dust from the heavy traffic. This is one of the most scenic areas in the country. Concern also regarding how it will affect local residents in terms of amenity. There is a holiday village across the road from the development.

3.5. Further information

In response to the FI request of 3rd October 2017, the applicant made a submission on 31st January 2018. This included a full archaeological impact assessment report, including results of archaeological testing under licence (17E0628) and confirmation that the volume of material to be imported is 78,000 tonnes. It is further stated that should planning permission be granted, a Waste Facility Permit Application will be submitted to KCC. The results of the archaeological assessment revealed that there were no archaeological deposits, features, artefacts recorded. It was further noted

that two previous test excavations nearby (2002 and 2007) had proved negative. It was concluded that there are no archaeological reasons to halt or delay the project.

4.0 Planning History

There is no planning history on the application site.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015-2021

The site is located in an area zoned **Rural General** which is described as being the least sensitive landscape, which can absorb moderate amounts of development.

Obj. ZL-1 seeks to protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people's lives.

Section 4.8.1 relates to Agriculture, which it is stated is the second largest employer in the County. The site is located within the line of **Protected Views and Prospects**, (Section 12.4). It is stated that County Kerry contains areas of outstanding natural beauty, which are recognised internationally and that there is a need to protect and conserve views and prospects adjoining public roads. Although development is not prohibited along identified routes, it should not seriously hinder or obstruct views. Objectives **ZL-5** and **ZL-6** apply.

5.2. Natural Heritage Designations

The site is within 15km of ten European Sites. These are

- Tralee Bay & Maharees Peninsula, West to Cloghane SAC (002070)
- Mount Brandon SAC (Site Code 000375);
- Slieve Mish Mountains SAC (Site code 002185);
- Killarney National Park, Macgillycuddy Reeks and Caragh River Catchment SAC (Site Code 000365);
- Castlemaine Harbour SAC (000343);

- Dingle Peninsula SPA (Site Code 004153);
- Tralee Bay Complex SPA (Site code 004188);
- Castlemaine Harbour SPA (Site code 004029);
- Killarney National Park SPA (Site code 004038); and
- Iveragh Penninsula SPA (Site code 004154).

6.0 The Appeal

6.1. Grounds of Appeal

The appeal is a third-party appeal against the decision to grant planning permission. The main points raised may be summarised as follows:

1. Principle of development

- The application should be for retention rather than permission, as the development has already taken place (see photos attached to grounds).
- The Owenalondrig River is zoned in the Development Plan. There does not appear to be any need/justification for the proposed development.

2. Buffer zone from River Owenalondrig inadequate

- The 30m buffer zone is not wide enough.
- There is no fencing in place, as required by condition 5(b) of the P.A. decision, notwithstanding the fact that the works at this end appear to have been completed.
- There is no buffer zone to the west of the track on site (see Photo 1 attached to grounds of appeal) and it would appear that an earthen fence has been constructed from the main road, most of the way down the site, (see Photos 2, 3, 4 attached to grounds).

3. Pollution control measures

- The P.A. decision included a condition requiring the implementation of pollution control measures (Condition 5 (e) and (f)). There do not appear to be any silt control measures or any other mitigation measures in place to prevent pollution of the river, yet the job seems to have been completed.

- There seems to be a track running down the middle of the site towards the buffer zone. How will the run-off from this track be prevented from entering the watercourse?

6.2. Planning Authority Response to grounds of appeal

The P.A. has not responded to the grounds of appeal.

6.3. First party response to grounds of appeal

The first party has not responded to the grounds of appeal.

6.4. Observations on the Grounds of Appeal

None received.

7.0 Assessment

7.1. It is considered that the main issues arising from the appeal relate to the principle of the development, the likely impact on the adjoining watercourse to the north and the impact on visual and residential amenities.

7.2. Principle of development

7.2.1. The practice of importing inert material for the purposes of land improvement in agriculture is quite common and, as such, the proposed development is considered to be appropriate in principle, given the nature of the existing use and surroundings. However, the scale of the development in terms of the area of land (3.98ha) and the amount of infill (78,000 tonnes), together with the nature of the site, which adjoins a national road and slopes steeply towards a watercourse, and is close to a number of residential properties, means that the environmental effects also need to be examined.

7.2.2. In addition to the agricultural purpose, I note from the file that the proposed development is also associated with the road improvement scheme for the N86, in that the source of the material arises from excavations elsewhere along the route. As such, the proposed development is unlikely to be an ongoing activity, and would probably be a one-off event. I noted from my site inspection, however, that the field

immediately adjoining to the east/northeast has also been filled recently and that there were several such sites along the N86 route, which could result in a cumulative effect in the area.

7.2.3. The appellant claims that the proposed development should be for retention rather than permission, as the works appear to have been completed. I can confirm from my site inspection that the much of the proposed works have been completed, particularly at the northern end of the site. However, there are still parts of the site which have not been filled, closer to the N86 and there is a newly created track leading directly northwards from the entrance. No fencing appears to have been put in place at the northern edge of the fill, but the proposed buffer zone for the watercourse appears to have been respected.

7.2.4. Given that there is potential for a number of environmental effects in the absence of appropriate mitigation, such as sediment run-off to the watercourse, noise and dust pollution, and visual impact, and that a substantial amount of the proposed works have been implemented prior to determination of the application/appeal, it is considered that the description of the proposed development is inadequate and should include retention of part of the development.

7.3. Impact on watercourse to north

7.3.1. The appellant has stated that the Owenalondrig River is a salmonid river and has expressed concern regarding potential pollution of the watercourse. I would share this concern as there is minimal information on the proposed construction works and associated mitigation measures to protect the watercourse. For instance, there is no information on how the stockpiles of soil are to be managed, no details of silt control measures or what measures are to be put in place to prevent contaminated/polluted surface water run-off or sedimentation or other contamination /pollution of groundwater run-off. The only references to any form of mitigation are the proposals to provide a 30m buffer zone and a fence at the edge of the fill area. The buffer zone appears to have been respected but the fence was not in place at the time of my inspection. Although the P.A., in its decision, had specified certain mitigation measures to be implemented in Condition No. 5, the implementation of a substantial part of the works has preceded the determination of the application/appeal, and there is no evidence that the specified mitigation measures have been implemented.

- 7.3.2. Having regard to the nature and scale of the development and to the steeply sloping lands adjoining the River Owenalondrig, and to the fact that a substantial part of the works appear to have already been implemented with no information regarding what mitigation measures (if any) were put in place, it is considered that the proposed development would give rise to an unacceptable risk of water pollution and sedimentation, due to run-off of soils and other material, which is likely to be detrimental to the water quality and ecology of the river.
- 7.3.3. In light of the fact that a substantial element of the works has commenced on site in close proximity to the steep decline to the river, it is not possible to impose conditions requiring compliance with mitigation measures in retrospect, or to accurately establish whether appropriate measures have been used. For this reason, it is considered that the Board has little option but to refuse permission. However, should the Board be minded to grant permission, it is considered that further information should be requested to enable these matters to be resolved satisfactorily.

7.4. Visual and residential amenity

- 7.4.1. The proposed development is located on lands which are within the Rural General designation, which is described as the least sensitive landscape. However, it is also located immediately adjacent to the main Tralee to Dingle road and it is also in the shadow of Mount Brandon and Strickeen Mountain, with uninterrupted views of the mountains to the north and is close to the scenic amenity areas along the coast of Dingle Bay to the south. It is therefore located in an area which is designated as having Views and Prospects which it is an objective to preserve. The direction of the views is to the north. Section 12.4 of the CDP states that such views from public roads are important to the amenity of the county and to its tourist industry.
- 7.4.2. Having inspected the site, it is considered that the topography and existing land cover are such that the proposed development, which involves importing and spreading soil and stones over the agricultural fields to a depth of 1.0-1.5m, would not significantly alter views over the site towards the mountains to the north. It is considered, therefore, that the proposed development, would not significantly alter the views and prospects available from the N86 at this location.

7.4.3. The Lispole Holiday Cottages are located immediately opposite the site to the south and there are a number of houses located further to the east. It is considered that the impact on the residential amenities of these properties would be confined to the construction period, in terms of noise, dust and visual impact. These matters have not been addressed in the application or the appeal. Given that a substantial element of the works has been carried out on site, it is not possible to impose conditions to regulate the construction activities that have already taken place. However, should the Board be minded to grant permission, it is considered that these matters could be addressed by means of appropriately worded conditions and the use of standard best practice measures in respect of the remaining works.

7.4.4. **Appropriate Assessment**

7.4.5. The P.A. reports screened out appropriate assessment. It is noted that the closest European sites are Mount Brandon SAC (000375) and Dingle Bay SPA (004153), which are c.1.5km to the north and c. 2km to the south, respectively. The other European sites in the vicinity are over 8km distant.

7.4.6. The Biodiversity Officer, in her report dated 15/09/17, stated that there is no hydrological connectivity with any European site and considered that the distances were too great for any likely significant effects. It is considered that given the distances involved, and the absence of any indication of a hydrological link to the European sites, Appropriate Assessment issues can be ruled out at this stage.

8.0 Recommendation

8.1. It is recommended that planning permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. Having regard to the nature and scale of the development and to the location of the site partly on steeply sloping lands adjoining the River Owenalondrig, at a location where the watercourse provides suitable habitat for salmon and trout, and to the fact that a substantial element of the proposed works have been carried out on site prior to the determination of the application and appeal, the

Board is not satisfied, notwithstanding the proposed buffer zone, that the proposed development would not give rise to an unacceptable risk of water pollution and sedimentation, due to run-off of soils and other material, which would be likely to have a detrimental effect on the water quality of the river. The proposed development would, therefore, be injurious to the amenities of the river and its environs and would be contrary to the proper planning and sustainable development of the area.

Mary Kennelly
Senior Planning Inspector

6th September 2018