



An
Bord
Pleanála

Inspector's Report ABP-302439-18

Development	Permission for the filling of an area of land with inert construction and demolition material for the reclamation of land for agricultural use.
Location	Drumcashel, Castlebellingham, Co. Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	17727
Applicant(s)	Bernard Lynch.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant(s)	Bernard Lynch.
Observer(s)	Multiple.
Date of Site Inspection	21 st March 2019.
Inspector	Patricia Calleary

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1.0 Site Location and Description

- 1.1. The appeal site, comprising just under six hectares in area, is located in the townland of Drumcashel, a rural area in County Louth. It lies c.1.7km northwest of Stabannan village and c.5.2km northeast of Ardee town centre. It is accessed off the L-1212 local road to the south and this road continues to the east through Stabannan, connecting with another local road L-2215 further east. The L-2215 connects further the N33 to the south. In the western direction, the L-1212 leads to and connects with the N52.
- 1.2. Occupying a part of two agricultural fields, the site is relatively flat and low-lying, dropping from a level of c.52m above ordnance datum (AOD) along the front/southern boundary to c.41m AOD at the northern / rear boundary. The L-1212 to the south is raised above the site at c.47m AOD. Boundaries, where they exist are defined mainly by post and wire fences and with hedgerows intermittently marking the most eastern boundary. The western boundary is unmarked as is the southern boundary away from the road. The centre of the site comprises two topographical depressions/hollows, which collect and hold rainwater in wet weather / winter conditions. It is stated that a 150mm land drainage pipe was installed within these depressions some years ago and this drainage pipe collects water prior to directing and discharging it into the adjoining stream.
- 1.3. The appellant's house, farm lands and farm buildings are located to the west of the appeal site. Agricultural lands lie to the north and east. To the south of the site, there is a group of houses laid out in a linear arrangement fronting onto the L-1212.
- 1.4. The wider area is characterised by agricultural landholdings and associated farm buildings with houses interspersed. Dundalk Bay is c. 8km to the north east. Views across the site are available towards the Cooley Mountains, Carlingford and the Feede Mountains beyond the bay.

2.0 Proposed Development

- 2.1. The proposed development would comprise the filling of land with inert construction and demolition (C&D) waste consisting of clay, soil and stone/concrete rubble for the stated purposes of reclamation of the land for agricultural use. A new vehicular

entrance off the L-1212 as well as an access track, on-site truck wash area and associated site development works are also proposed.

- 2.2. It is set out in the supporting planning statement that 98,700 tonnes of C&D waste would be imported onto the site in total with a maximum of c.24,750 tonnes per year on a net site area of 4.43 ha. Slightly different volumes are referenced in the appeal, in which it is stated that a maximum of 92,000 tonnes would be imported annually with an average of 18,400 tonnes per annum. It is further stated that the infill material would primarily arise from the Louth/north-east region. The intended haul route would be along the local road network leading to the east of the site and connecting with the N33 to the south. The N33 connects with the M1 further east. It is specifically stated that it is not proposed to access the site from the west. The haul route would pass through Stabannan village.
- 2.3. When filled the site would be graded, capped and seeded and thereafter would be used for agricultural purposes and the entrance previously formed along the L-1212 local road would be closed. It is stated that a waste facility permit would be required for the development and that an application has been submitted to the Local Authority and that this application would only be decided by the Local Authority in the event of a grant of permission issuing in the first instance.
- 2.4. In addition to the standard planning drawings for an application of this nature, the planning application was accompanied by a Planning statement, an Appropriate Assessment screening report and an Engineering report. Following a request for further information, the response was accompanied by a number of drawings, technical details and the following reports:
 - Revised Appropriate Assessment Screening Report
 - Noise Impact Report
 - Dust Assessment Report
 - Photomontages
 - Landscape Assessment Report
 - Traffic Assessment Report

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority issued a decision to **refuse permission** for three reasons, all of which related to traffic grounds, particularly that development would generate a traffic hazard in the absence of adequately sized passing bays.

3.2. Planning Authority Reports

3.2.1. Initial Planning Report (21st November 2017)

- principal issues requiring consideration include: Site history, compliance with County Development Plan, Amenity, Traffic, Environment and Flooding;
- considered AA Screening report to be deficient;
- considered the proposed development could be screened out of the requirement for EIA;
- recommended a request for further information from the applicant.

3.2.2. Final Planning Report (31st July 2018)

- considered proposal was acceptable from visual and landscape perspective;
- revised AA Screening report and the findings of no significant effects noted;
- buffer zone of 10m noted;
- dust and noise impact noted;
- development would generate a traffic hazard in the absence of adequately sized passing bays;
- recommended a refusal based on traffic reasons.

3.2.3. Other Technical Reports

- Infrastructure: Initially sought further information and subsequently recommended refusal;
- Environment: No objection.

3.3. Prescribed Bodies

- Department of Culture, Heritage and the Gaeltacht: Recommended a condition (Archaeological Monitoring) and states the Department have no nature conservation comments;
- An Taisce: No comments received within the statutory period;
- Heritage Council: No response;
- An Comhairle Ealaíon: No response;
- Inland Fisheries Ireland (IFI): Recommended a condition (buffer zone & protection of water quality and instream habitat).

3.4. Third Party Observations

- 3.4.1. A significant number (c.131) of third party submissions were received on the application. The issues raised are set out in the Planning Officer's report grouped under the headings: Rationale/General Issues, Road Safety/Traffic, Public Health/Pollution, Landscape/Environmental, Ecology and Local Amenity/Community. The issues raised are also covered in the observations made on the appeal below.

4.0 Planning History

- 4.1. The following planning history is of relevance to the appeal.

- **17150:** Louth County Council refused permission (August 2017) for filling an area of land with inert construction and demolition material for the purposes of reclamation of land for agricultural use. The refusal decision centred around traffic, specifically the horizontal alignment of the local road limiting the stopping sight distance for vehicles approaching from an easterly direction.
- **Pre-Planning Consultation** (related to current application): Stated to have taken place on 21st September 2017; no details on appeal file.

5.0 Policy and Context

5.1. Local Policy

- 5.1.1. The Louth County Development Plan 2015-2021 is the relevant statutory plan for the area. The site is located in a rural area outside of any designated settlement and is not governed by any specific land use zoning objective. A comprehensive list of policies and objectives has been set out in the planning officer's reports. The following are of specific relevance in relation to agriculture: RD7 (maintain a vibrant and health agricultural sector), RD8 (facilitate agricultural development ensuring protection of water and ecology from pollution), RD9 (facilitate agricultural development ensuring no negative impact on scenic amenity of countryside). Policies that relate to Development Zone 5 in which the appeal site is located, include Policy RD39, which comprises a list of suitable categories of development, including 'agricultural developments' and 'agricultural diversification'.
- 5.1.2. In terms of the natural and built environment, the appeal site lies within the 'Muirhevna Plain' which is classified as of local importance. In this regard Policy HER 10 is of relevance and seeks to permit forms of development that are sustainable and do not unduly damage or take from the character of the landscape or natural environment.
- 5.1.3. Chapter 8 of the Louth County Development Plan sets out the Council's approach to the environment and includes, amongst others, Policy ENV 23 which seeks to implement the provisions of the Eastern-Midlands Region Waste Management Plan 2015-2021.
- 5.1.4. Other provisions include: Policy TC12 (transport requirements), Policy HER 33, HER 4 and HER 5 (Appropriate Assessment);
- 5.1.5. Chapter 9 sets out the Council's approach to energy and communications, including Section 9.9.12, which states that construction-related waste accounts for a significant proportion of total land filled waste in Ireland.

5.2. National and Regional Policy

- 5.2.1. Project Ireland 2040 - National Planning Framework (NPF), Government of Ireland, 2018. The NPF is the Government's high-level strategic plan for shaping the future

growth and development of Ireland to the year 2040 and includes the following provisions:

- National Policy Objective 56: Sustainably manage waste generation, invest in different types of waste treatment and support circular economy principles, prioritising prevention, reuse, recycling and recovery, to support a healthy environment, economy and society;
- Under National Strategic Outcome 9 (Sustainable Management of Water and other Environmental Resources) - Effective Waste Management: requires capacity and systems to manage waste (including C&D waste);

5.2.2. The Eastern-Midlands Region Waste Management Plan 2015-2021 is the relevant Waste Management Plan for the region including County Louth. In relation to C&D waste, it states that recovery of much of the C&D waste stream has been managed by placing it in a variety of land use applications and that this treatment, known as backfilling, includes land reclamation, improvement or infill works. Under Section 16.4.4 Recovery – Backfilling, it sets out that backfilling activities (of inert waste), which meet the recovery definition and are in compliance with Articles 4 and 13 of the Waste Framework Directive sit on the ‘other recovery’ tier of the waste hierarchy. In terms of Policies, those relevant include E13 (Local Authorities, the EPA and An Bord Pleanála must take account of the scale and availability of existing filling capacity) and E14 (co-ordination of future authorisations with a preference of large restorations sites ahead of shorter life spans).

5.2.3. Other:

- A Resource Opportunity – Waste Management Policy in Ireland (DOECLG, July 2012) - The policy document ‘A Resource Opportunity – Waste Management Policy in Ireland (2012)’ acknowledges the unsustainable dependence on landfill as a means of managing waste and has a specific target for preparing for reuse, recycling and other material recovery (incl. beneficial backfilling operations using waste as a substitute) of 70% by weight of C&D waste (excluding natural soils & stone);

- Quarry & Ancillary Activities, Guidelines for Planning Authorities (DEGHL, 2004) sets out best practice for waste management including under Section 3.9 (Waste Management), that quarries should consider using inert C& D waste arisings, which do not have the potential to displace natural aggregates, for reinstatement and restoration purposes on the quarry site.

5.3. Natural Heritage Designations

5.3.1. The following European sites lie within a 15km buffer of the appeal site and further consideration of these sites is set out under Section 7.7 (Appropriate Assessment) of this assessment.

- Stabannan-Braganstown Special Protected Area (SPA) (Site Code 004091)
c. 500m to the north
- Dundalk Bay SPA (Site Code 004026) c.7.5km to the north east
- Dundalk Bay Special Area of Conservation (SAC) (Site Code 000455)
c.7.5km to the north east

5.4. EIA Screening

5.4.1. Having regard to the nature and scale of the proposed development, it is considered that the issues arising from the proximity/ connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment) as there is no likelihood of other significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The first party sets out a description of the site and the proposed development, details of a previous planning application made on the site and a summary of the policy context. The appeal is accompanied by a number of appendices including, among others, an engineering report by DCE engineering consultants, a road safety assessment report by TMS consultants, an article by Eolas on C&D waste, a copy of

a letter from the operator and a copy of a completed application form, as part of a waste facility permit application stated to be for the appeal site.

6.1.2. At the outset, the appellant expresses dissatisfaction with the planning process, stating that on addressing a previous refusal for a similar development to the current proposal, the current application received a decision to refuse permission for different reasons. It is stated that this is unreasonable in the context of Section 28 of the Development Management Guidelines and Section 34(10) of the Planning and Development Act 2000, as amended (hereinafter referred to as 'the Act').

6.1.3. The specific grounds of appeal are summarised as follows:

Reason No. 1

- refers to the road safety assessment commissioned as part of the appeal in which it is submitted that vehicles can pass each other safely on the road.

Reason No.2

- requirement for speed ramps should not have formed a reason for refusal as this is a minor matter which could be dealt with by way of a planning condition including where a special contribution condition could apply to allow the delivery of ramps by the Local Authority.

Reason No.3

- issues around surfacing of the road could be adequately dealt with by way of a planning condition and the applicant's technical proposal for surface dressing is reasonable. Refers to precedent cases where such matters were dealt with by way of planning conditions attached to grants of permission.

6.2. Planning Authority Response

6.2.1. A summary of the main points set out in the Planning Authority's response is set out as follows:

- having reviewed the appeal documents, refusal reasons are still valid;
- passing bays proposed by the applicant are deficient due to lack of detail and they do not meet the standards set out in Transport Infrastructure Ireland (TII) publications DN-GEO-03030-01 & DN GEO-03030 and the submitted safety statement does not concur with these standards;

- maximum width of road proposed to be provided is 5.3m and the passing bays are not over 20 metres in length to allow HGVs to pass safely;
- applicant proposes the use private entrances for which no consent is given;
- acknowledges that in the event of a grant of permission, Refusal reasons No.s 2 and 3 could have been dealt with by way of planning conditions.

6.3. Observations

- 6.3.1. Nine observations on the appeal were received by the Board. One of the submissions is from a community representative groups (Stabannon Landfill committee), stated to represent a significant majority of local residents. This observation contains a number of supporting appendices including an engineering report and photographs, report from a planning consultant, multiple signed letters of objection to the proposal, an environmental report, narrative and a copy of ECJ judgement in respect of Case C-323/17.
- 6.3.2. The principal points raised in the collective observations received are set out below in summary form, grouped under respective category headings.

Landuse, Landscape and Amenities

- the vista across the L-1212 towards the Cooley Mountains and Dundalk Bay would suffer negative impact for the duration of the proposed works;
- unsuitable quiet rural location and development would be injurious to the amenities of the area;
- noise and pollution due to particulate matter could arise on neighbouring houses;
- would cause drainage issues on adjoining lands;
- benefit to the land would be marginal in that it is already improved grassland and infilling could result in increased risk of flooding, thereby offsetting any benefit;
- C&D waste should be directed into worked out quarries.

Traffic

- development would create a traffic hazard on the local road network, including the road passing by a primary school, pre-school, GAA pitch, Church and two public houses in Stabannan village;
- road widths are inadequate, and road geometry fails to meet TII requirements;

Biodiversity and Appropriate Assessment

- could impact on River Glyde and adjoining Stabannan/Braganstown SPA;
- a Natura Impact Statement and full Appropriate Assessment is required;
- development site was once probably a marsh / wetland area and currently holds water in a hollow which is transported via a drain which is of high biodiversity value and the drain could become inundated with impacts after heavy rainfall which have not being considered;
- AA screening does not address the impacts of the overall operation including transport, filling, capping and the time interval for grass to grow on the topsoil;
- AA screening does not address risk of particulate and leachate contamination being released and transported to the nearby Stabannan/Braganstown SPA and River Glyde with unknown or uncertain effects;
- without mitigation measures proposed in the Appropriate Assessment Screening report the project is capable of having an effect on European sites which would be contrary to the judgement of the CJEU in Case C-323/17, People Over Wind and Peter Sweetman v Coillte Teoranta;

Environmental

- requirement to improve the land could be undertaken more effectively and at less environmental risk by installing additional field drains;

Other

- It is stated in some of the observations that the site is prone to flooding, as shown on OPW mapping. Other observers state that the existing agricultural uses of the land does not appear to be affected by occasional pluvial flooding;
- development is a commercial landfill enterprise rather than an agricultural land reclamation proposal and the location is not suitable when considered against Louth County Development Plan policy;
- no justification presented for the proposal to infill the land by up to three metres comprising C&D waste;
- development would seriously injure the amenities of the rural area within which it is proposed;
- insufficient evidence provided to ensure that the proposed sediment tank would act as a silt trap in the manner planned.

6.4. Further Responses

- 6.4.1. TII responded to an invitation for comments by the Board, acknowledging that the subject site accesses the local road network prior to access to the national road network and stating that they have no specific observations.

7.0 Assessment

7.1. Introduction

- 7.1.1. The proposed development is for the filling of an area of low-lying agricultural land with inert C&D waste. It was originally stated in the application that 98,700 tonnes of C&D waste would be imported in total with a maximum of c.24,750 tonnes per year and the net site area to be filled would be 4.43 ha. At the appeal stage, it was stated that a maximum of 92,000 tonnes would be imported with an annual average of 18,400 tonnes. The material would be distributed across the site working from west to east. Infilled material would be levelled and graded and thereafter it would be capped off and seeded to establish grass cover.

- 7.1.2. The types of waste to be utilised in the infilling activity would be governed by a Waste Facility Permit which is a separate permitting process. An application for the permit has evidently been made and a decision on that application would normally only be concluded post a grant of planning permission.
- 7.1.3. At the outset, the appellant outlines that a previous application for broadly the same development was issued a decision to refuse permission by Louth County Council under Reg. ref. 17150. The refusal centred around a specific traffic issue regarding the horizontal alignment of the local road limiting the stopping sight distance for vehicles approaching the site from an easterly direction. The appellant states that this refusal reason was addressed in the current application, however, the Planning Authority decided to refuse permission for other traffic-related reasons. It is stated that this is unreasonable when considered against Section 28 of the Development Management Guidelines and Section 34(10) of the Act.
- 7.1.4. Notwithstanding this point, which is of relevance in terms of consistent planning decisions, the previous decision made by Louth County Council was not appealed to the Board and in this instance the Board can decide the application *de novo* taking all relevant matters into account and are not restricted by any previous decision of the Planning Authority.
- 7.1.5. Having inspected the site and examined the documentation on file and information gathered during my site inspection, the key issues arising in respect of the assessment of this appeal now before the Board comprise the following:
- Principle and Policy
 - Traffic and Road Safety
 - Landscape and Visual Impact
 - Ecology
 - Dust, Noise and Vibration
 - Appropriate Assessment
 - Other Matters

7.2. Principle and Policy

- 7.2.1. The proposed development is for the infilling of low-lying land with inert C&D waste. I am satisfied that whilst the infilling itself is not strictly an agricultural activity, it would serve to raise the ground of a low-lying hollow area on agricultural land, therefore allowing it to be utilised more productively. It would therefore be supported in principle by Policy RD39 of the applicable Louth County Development Plan 2015-2021, which aims to favourably consider agricultural development within Development Zone 5 in which the site is located. It would also be arguably supported by Policies RD7 (maintain a vibrant and health agricultural sector), RD8 (facilitate agricultural development ensuring protection of water and ecology from pollution) and RD9 (facilitate agricultural development ensuring no negative impact on scenic amenity of countryside).
- 7.2.2. It is stated by observers that the land is already in agricultural use, primarily for sheep grazing, having previously been used for crop growing/tillage, and that the land could be improved by the installation of a series of land drains that would be more preferable in environmental terms than the current proposal for use of C&D waste.
- 7.2.3. The appeal is accompanied by a copy of a Waste Facility Permit application form in which the activity is described as falling into classes 5 and 6 under the third schedule of the Waste Management (Facility Permit and Registration) Regulations 2007. Class 5 generally means naturally occurring inert waste (e.g. clay, silt, sand and stones) and Class 6 means recovery of 'other' types of inert waste.
- 7.2.4. The current County Development Plan for Louth is largely silent on C&D waste save for Section 9.9.12, which notes that construction-related waste accounts for a significant proportion of total landfilled waste in Ireland.
- 7.2.5. The policy document 'A Resource Opportunity – Waste Management Policy in Ireland (2012)' acknowledges the unsustainable dependence on landfill as a means of managing waste and has a specific target goal for 'preparing for reuse, recycling and other material recovery (incl. beneficial backfilling operations using waste as a substitute) of 70% by weight of C&D waste (excluding natural soils and stone) by December 2020'. This goal would appear to arise from the Waste Framework Directive (2008/98/EC). The Progress to EU Targets (2018) indicates that the target

will be achieved. It is clear that the proposal would result in C&D waste being diverted away from conventional landfill to instead recover it through backfilling of low-lying agricultural lands.

- 7.2.6. The proposed development requires consideration in terms of Policy ENV 23 of the current Louth County Development Plan (implement and support the provisions of the Eastern Region Waste Management Plan 2015-2021). Under Section 16.4.4 of the Waste Management Plan (Recovery – Backfilling), the Plan sets out that backfilling activities of inert waste, which meet the recovery definition and are in compliance with Articles 4 and 13 of the Waste Framework Directive sit on the ‘other recovery’ tier of the waste hierarchy. Policy E13 requires future authorisations for backfilling to take account of the scale and availability of existing capacity. No information was put forward in the application or appeal regarding existing capacity.
- 7.2.7. A number of submissions made in the course of the application submit that the site is inherently unsuitable and that infilling of land with C&D waste would be better directed to previously worked out quarry sites where the road network is already in place. This is a reasonable point having regard to best practice put forward under paragraph 3.9 (Waste management) of the Quarry & Ancillary Activities Guidelines for Planning Authorities, 2004 which sets out that quarries should consider using inert C&D waste arisings for reinstatement and restoration purposes. In addition, Policy E14 of the Eastern-Midlands Region Waste Management Plan 2015-2021 requires co-ordination of the future authorisations of backfilling sites in the region and states preference for larger restoration sites ahead of smaller sites with shorter life spans.
- 7.2.8. However, notwithstanding the absence of information around existing capacity, which I have outlined above, the proposal clearly falls within the parameters of Policy 39, *prima facie*, in facilitating improvement of agricultural lands on a particular site, which has sufficient capacity, and overall the recovery of C&D waste in the form of backfilling for this purpose is supported by relevant planning and waste policy as outlined above.
- 7.2.9. In the NPF, National Objective 56 sets out a requirement for the sustainable management of waste, prioritising prevention, reuse, recycling and recovery. National Strategic Outcome 9 (Sustainable Management of Water and other

Environmental Resources) seeks effective waste management, requires capacity and systems to manage waste, including C&D waste in an environmentally safe and sustainable manner. National Policy Objective 23 supports a sustainable economically efficient agricultural and food sector. The proposal for taking in inert C&D waste as proposed can readily be regarded as a sustainable means to both improve land and to manage C&D waste.

7.2.10. On the basis of my assessment above, I am satisfied that the principle of the development is supported by local, regional and local planning and associated waste policy and objectives and the principle is acceptable subject to consideration of detailed environmental and planning matters which I continue to address in the remainder of my assessment below.

7.3. Traffic and Road Safety

7.3.1. Traffic and road safety concerns were central to the planning authority's decision to refuse permission and are the principal matters raised by observers who object to the development. The intended haul route would be along the L-1212 local road to the south when exiting the site, the route would continue to the east along this road through Stabannan, connecting with another local road, the L- 2215, which connects with the N33 to the south and from there, the route would access the M1 motorway which connects Dundalk and Dublin city. It is specifically stated that it is not proposed to access the site from the west. In the Traffic Assessment that accompanied the further information response, it is stated that an average of 3.3 HGV movements per day to the site would result, which would equate to 6.6 HGV total movements to and from the site, and it is stated that given the nature of the construction industry, a maximum of 40 HGVs transporting material to the site per day could occur, which would be the equivalent of 80 HGV movements.

7.3.2. In terms of visibility, the applicant submits that sightlines of 177m to the west and 190m to the east are achievable at the access proposed onto the local road and by reference to Table 7.4 of the current Louth County Development Plan, these sightlines are acceptable. Proposals for an access roadway using bound material, per TII standard drawing – TOO CC-SCD-00706, is proposed for the first 25m in from the public road leading to a hardcore unbound surface for the remainder.

- 7.3.3. In relation to **Refusal Reason No.1**, the Planning Authority's is of the view that the passing bays proposed are deficient in that little or no details have been provided and HGVs passing would rely on use of road verges, including the area in front of recessed private house entrances. In the appeal, the appellant states that HGVs meeting each other would be an unlikely occurrence and on the rare occurrence, adequate forward visibility would allow drivers to adjust speeds and pass slowly. A road safety assessment report was submitted with the appeal in which it is concluded that the risk of traffic collisions would be low, and the development would not lead to an unacceptable traffic hazard. I have reviewed the RSA collisions database and note that since such records began in 2005, 4 collision occurrences (3 of which were minor and 1 serious) are recorded on the L-1212 / L-2215 local road network between the site and the N33 to the south, and two other collisions occurred at the junction of the L-2215 and N33.
- 7.3.4. In their response to the appeal, the Planning Authority reaffirms its position that the passing bays proposed are deficient with little or no information provided, and it is therefore submitted that the passing bays do not meet the standards set out in TII's publication DN-GEO-03030. I have examined this document which states 'with an existing carriageway width of 5.3m or less, it may be appropriate to provide passing bays' and 'where passing bays are required, they shall be introduced to increase the road width to a maximum width of 6.5m'.
- 7.3.5. In this regard, the Planning Authority noted the maximum width of the local road that the applicant proposes to provide is 5.3m and no passing bays of 20m in length such as would allow HGVs to pass safely as required in the aforementioned TII publications are proposed. In relation to the submitted road safety assessment report which accompanies the appeal, the Planning Authority considers that it does not concur with TII standards referenced above.
- 7.3.6. Refusal reason No.1 also relates to concerns regarding potential for 80 HGV movements per day. The appellant states that this would not be the norm but the absolute maximum and reaffirms that the average number is 6.6 HGVs to and from the site and that there would be various periods of inactivity. By way of comparison, it is stated that if the maximum movements were to occur on a continuous basis, the entire volume of material proposed would be imported over a 6-week window which it is inferred is unlikely to occur.

- 7.3.7. **Refusal Reason No.2** relates to the design of ramps on the public road and **Refusal Reason No.3** relates to surface dressing of the road. At appeal stage, the Planning Authority acknowledge that in the event of a grant of permission, these issues could have been dealt with by way of an appropriate planning condition. I concur with this view.
- 7.3.8. I have reviewed the information on file. Arguments are made by the first party appellant that the aforementioned TII documents refer to national roads only and should not apply to the local road network. However, while I note the title of the documents refer to National Roads, it is clear nonetheless that under the heading of 'Passing Bays', reference is made to tertiary roads and the diagram Figure 3/1 showing a typical passing bay clearly refers to a local road.
- 7.3.9. It is evident from the information submitted that the road has adequate capacity in terms of flow, however the key issue is that the road alignment and width is deficient, and HGVs could not pass safely. There is very little information on file addressing this issue. Reference is made by the appellant to drawings submitted at further information stage (Dwg 4146 C14A-17A and C19A-22A). The drawings include proposals for using existing road verges and private setback accesses into private houses to allow vehicles to pass. This response falls short of the details of standard passing bays set out in Figure 3/1 of TII's publication DN-GEO-03030 and while departures can be accommodated, they must be technically justified.
- 7.3.10. I also note that no proposals have been put forward for management of traffic during the operational phase, in the form of an outline traffic management plan. I accept that the traffic volumes anticipated are relatively low when averages are noted, and the development would not be permanent. Nonetheless and as submitted in the course of the application and appeal, maximum numbers of HGVs can be significantly higher on any given day and this can occur at any stage over the intended five-year period. I accept there would be periods of little or no activity from time to time, however it is the periods of high activity that can give rise to traffic hazard and increased risk of collision and while the higher HGV movements may be infrequent, the issue has not been resolved by the applicant either during the application or appeal stages.

7.3.11. To conclude, it is considered on this basis of the information on file, that the development would require movement of HGVs along a local road of deficient width and has the potential to result in a traffic hazard and to compromise road safety. In this regard, the impact on users of the road infrastructure is considered unacceptable. I therefore recommend that permission should be refused for reasons of traffic hazard and road safety. Notwithstanding my conclusion and recommendation in this regard, I am satisfied that the issues which formed the basis for the remaining two refusal reasons (Reason No.2 and 3) could be adequately dealt with by way of planning conditions in the event of a grant of permission and for this reason, I do not recommend that these conditions attach as reasons for refusal should the Board decide to refuse permission.

7.4. Landscape and Visual

- 7.4.1. Concerns are raised at the application and appeal stages around landscape and visual impacts, including the impact of the development on the vista of the Cooley Mountains and the requirement of steeply sloping banks on the site once the field is infilled and the ground level is raised. The site lies within the 'Muirhevna Plain' landscape character area, which is classified as being of local importance. Views across the site through Stabannan/Braganstown SPA provide clear vistas of the Carlingford and Feede Mountains Area of Outstanding Natural Beauty (AONB). There are no protected views in the vicinity of the appeal site.
- 7.4.2. Following a request for further information during the course of the application, a landscape and Visual Impact Assessment and photomontages showing the site before (baseline) and after (proposed) infilling at two locations along the L-1212 was submitted. In this regard, I am satisfied that while views of the infilling operations would be evident in the local context, particularly along the L-1212 roadway and from houses along the local road network which currently overlook the site, these would in my view be moderate at worst and would not be so great as to warrant withholding a grant of permission. On completion of the works, the lands would be graded, capped with soil and reseeded and would continue in agricultural use in-keeping with its current context. No disturbance to existing hedgerows are proposed and therefore no reinstatement of these is required. Accordingly, once the development would be

complete, I am satisfied that it would not result in any undue adverse visual or landscape impacts on any protected views / vistas or on the surrounding area.

7.5. Ecology

- 7.5.1. The proposal would cause an initial loss of grass cover on improved agricultural grassland. However, the area would be grassed over post completion of infilling. No loss of ecological habitats of significance on site would result. Hedgerow boundaries where they exist would not be removed.
- 7.5.2. Within the initial Appropriate Assessment report submitted with the application, it is stated under Section 3.5 (likely effects) that any indirect effects would be unlikely to impact on European sites, though such effects could potentially alter the ecology of the River Glyde. As set out in the IFI's submission to the Planning Authority, the River Glyde is a valuable fisheries resource and contains Atlantic salmon and Lamprey, listed as Annex II species under the European Habitats Directive. It is strongly submitted in one of the observations on the appeal that the drain to the east is of high biodiversity value, supporting a range of wetland species and that the drain could be inundated by displaced flooding waters post-infilling operations.
- 7.5.3. Measures proposed to protect ecology, including aquatic ecology, involve the excavation of an interceptor drain to the east and north and upstream of the existing open drain on the site. This interceptor drain is intended to capture all silt laden waters during infilling operations and this water would enter a precast concrete silt tank to allow silt/sediment to settle out and clean water which would then be released to the adjoining open drain. It is stated that the sediment tank would be emptied on a bi-annual basis or as often as required. A detail of the tank and a site layout plan drawing, including the interceptor drain, were presented with the application and are on the Board's file. I note the tank would be a standard concrete structure with 4.5 metre cubic capacity. I would have some reservations in relation to lack of a design, including calculations such as would demonstrate the suitability and sufficient capacity of the tank for the particular type of works proposed on a reasonably large open site. However, I would expect that the infilling works would take place as phases on smaller sections of the site at a time and that all of the silt-laden run-off which would pass through the tank could be controlled.

- 7.5.4. In addition to the sediment tank, a 10m setback buffer zone adjoining the interceptor drain is proposed where infilling would be avoided.
- 7.5.5. Once infilled and seeded, the water would drain naturally to ground and to surface water and given that no hard-surface area is proposed and noting the modest nature and scale of the development, no increase in flooding could conceivably occur. Should the Board decide to grant permission, I would recommend that further details of the sediment tank, including calculations, should be submitted to demonstrate that the size is sufficient to hold the anticipated volume of silt-laden waters and that it would be capable of taking the flow of water and ensure that silt / sediment is deposited prior to entering the open drain to the east. This could readily be secured by way of a planning condition seeking the technical details to be submitted to the Planning Authority in advance of commencement of the works. Noting the protective measures proposed and further details around the sediment tank, it can be concluded that the development would not result in loss of ecological habitats or species and the development should not be refused for ecological reasons.
- 7.5.6. I have dealt with matters of Appropriate Assessment including assessment of effects on European sites under Section 7.7 below.

7.6. **Dust, Noise and Vibration**

- 7.6.1. In relation to Dust and Particulate Matter (PM), the applicant submitted a dust assessment report, prepared by a competent expert. I am satisfied that these issues have been well considered and appropriate control measures are proposed including provision of a wheel wash, speed controls and paving of the access road at the entrance and for a 25m length.
- 7.6.2. In relation to noise and vibration, the applicant has submitted a noise impact assessment covering noise and vibration, which concludes that the predicted noise levels lie well below industry standards and that the noise which would be generated by road traffic would be negligible and vibration would be below the human threshold of perception.
- 7.6.3. Overall, I am satisfied that the development should not be refused permission for reasons of dust, noise or vibration.

7.7. Appropriate Assessment

7.7.1. Introduction

Article 6(3) of Directive 92/43/EEC (Habitats Directive) requires that any plan or project not directly connected with or necessary to the management of a European site(s), but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site(s) in view of the site(s) conservation objectives. The Habitats Directive has been transposed into Irish law by the Act, and the European Union (Birds and Natural Habitats) Regulations 2011-2015. In accordance with these requirements and noting the Board's role as the competent authority who must be satisfied that the proposal would not adversely affect the integrity of the European site(s), this section of my report assesses if the project is directly connected with or necessary to the management of European Site(s) or in view of best scientific knowledge, if the project, individually or in combination with other plans or projects, is likely to have a significant effect on any European Site(s), in view of the site(s) conservation objectives, and if a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement (NIS) is required.

7.7.2. Appropriate Assessment – Stage 1 Screening

In relation to Appropriate Assessment Stage 1 screening, the issue to be addressed is whether the project is likely to have a significant effect, either individually or in combination with other plans and projects on European sites in view of the sites' conservation objectives. A description of the proposed development is set out in Section 2 of this report. The application provided an Appropriate Assessment Screening report and following a request for further information, a revised report was submitted to the Planning Authority.

The revised Appropriate Assessment screening report identified three European sites within 15 km of the application site. These are Stabannan-Braganstown SPA (Site Code 004091) c.500m to the north, Dundalk Bay SPA (Site Code 004026) c.7.5km to the north east and Dundalk Bay SAC (Site Code 000455) c.7.5km to the north east of the appeal site. Their locations are presented on a map extract included with the revised AA Screening Assessment.

I would agree having regard to the Source-Pathway-Receptor model that the sites identified are those that are relevant for the screening assessment and no others have been omitted.

The qualifying interests and conservation objectives for each of the sites are outlined below.

Stabannan-Braganstown SPA (Site Code 004091)

The Stabannan-Braganstown SPA (Site Code 004091) qualifying interests include Annex II species (A043 Greylag Goose [*Anser anser*] wintering). The general conservation objective associated with the SPA is to maintain or restore the favourable conservation condition of the Greylag Goose as a Special Conservation Interest for this SPA.

Dundalk Bay SPA (Site Code 004026)

The Dundalk Bay SPA (Site Code 004026) qualifying interests include: Great Crested Grebe (*Podiceps cristatus*) [A005], Greylag Goose (*Anser anser*) [A043], Light-bellied Brent Goose (*Branta bernicla hrota*) [A046], Shelduck (*Tadorna tadorna*) [A048], Teal (*Anas crecca*) [A052], Mallard (*Anas platyrhynchos*) [A053], Pintail (*Anas acuta*) [A054], Common Scoter (*Melanitta nigra*) [A065], Red-breasted Merganser (*Mergus serrator*) [A069], Oystercatcher (*Haematopus ostralegus*) [A130], Ringed Plover (*Charadrius hiaticula*) [A137], Golden Plover (*Pluvialis apricaria*) [A140], Grey Plover (*Pluvialis squatarola*) [A141], Lapwing (*Vanellus vanellus*) [A142], Knot (*Calidris canutus*) [A143], Dunlin (*Calidris alpina*) [A149], Black-tailed Godwit (*Limosa limosa*) [A156], Bar-tailed Godwit (*Limosa lapponica*) [A157], Curlew (*Numenius arquata*) [A160], Redshank (*Tringa totanus*) [A162], Black-headed Gull (*Chroicocephalus ridibundus*) [A179], Common Gull (*Larus canus*) [A182], Herring Gull (*Larus argentatus*) [A184], Wetland and Waterbirds [A999]. The conservation objectives associated with this SPA is to maintain the favourable conservation condition of the qualifying interests in Dundalk Bay SPA, which are listed above, as defined by a list of attributes and targets.

Dundalk Bay SAC (Site Code 000455)

The Dundalk Bay SAC (Site Code 000455) qualifying interests include: Estuaries [1130], Mudflats and sandflats not covered by seawater at low tide [1140], Perennial vegetation of stony banks [1220], Salicornia and other annuals colonising mud and

sand [1310], Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330] and the Mediterranean salt meadows (*Juncetalia maritimi*) [1410]. The conservation objective associated with this SAC is to maintain the favourable conservation condition of the qualifying interests in Dundalk Bay SPA, as defined by a list of attributes and targets.

7.7.3. Stage 1 Screening Assessment

A description of the project is set out in the applicant's revised Appropriate Assessment screening report. I also refer the Board to the project description in Section 2 (Proposed Development) of my report above. The project is not considered by the Habitats Directive to be directly connected with or necessary to the management of European designated sites. The development would not entail any landtake or works within any European sites and the sites do not hold any habitats or species for which they are designated and therefore there are no direct effects likely to occur on any such site as a result of the development.

Any indirect effects from the works would have to occur through hydrological links. In the course of the planning application, IFI have identified that watercourses on the site flow into the River Glyde. The River Glyde is c.1.5 km north of the appeal site. It borders the Stabannan-Braganstown SPA (Site code 004091), c.500 m north and downstream of the site. The River Glyde flows into the Dundalk Bay SPA (site code 004026) and Dundalk Bay SAC (Site code 000455) 7.5km downstream and to the north-east of the site. Therefore, particular regard is had to these European sites as hydrological links via surface water pathways appear to exist. The presence or otherwise of hydrological links between the appeal site and the European sites have not been examined in the revised Appropriate Assessment Screening report and it is deficient in this regard.

It is submitted in the revised Appropriate Assessment Screening report that any indirect effects would be prevented from the construction stage by the current design, which it is stated includes 'sufficient measures'. It is also submitted that extra sediment would be most unlikely to impact on the European sites, which it is submitted depend on continuous movement and deposition of sediments. In the conclusion of the report, reference is made to measures proposed to prevent material entering the existing drain to the east. Though the details of the measures

are not expressly set out in the revised Appropriate Assessment screening report, it is reasonable to assume that such measures are meant to include the silt trap/settlement pond together with interceptor drains and the 10m buffer zone. It is also submitted that there is no possibility of 'in combination' effects or the necessity to carry out a Stage 2 assessment (Natura Impact Assessment).

Referring to the preventative measures, observers submit that this implies the development without mitigation is capable of having an effect on European sites and would be contrary to the judgement of the CJEU in Case C-323/117 in which it was ruled that it is not appropriate at the screening stage to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site. The Department of Culture, Heritage and the Gaeltacht in an observation to the Planning Authority stated that they had no nature conservation comments.

It is of relevance to note that the proposal is for the infilling of lands with inert C&D waste. This activity would be further regulated through the waste facility permitting process. The main concern is the sedimentation which could arise during the infilling works and an interceptor drain is proposed to carry silt laden waters to a silt pond designed to retard the flow and influence the sediments to settle out. This is a well-established method and if appropriately designed and maintained could arguably be considered one which is an integral part of the design. In addition, a 10m buffer is proposed along the onsite drains. Notwithstanding these measures, which are noted, having regard to the judgement of the CJEU in Case C-323/117, they could also reasonably be construed as measures with a purpose to avoid or reduce significant effects on the European sites with which they are linked.

By applying the precautionary principle and in the absence of the aforementioned measures including interceptor drain, silt / settlement tank and buffer zone, indirect effects on the aforementioned European sites, having regard to their conservation objectives, cannot at this point be ruled out with certainty. Accordingly, having regard to the guidance set out in 'Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities, (DEHLG, 2009)', the assessment is required to proceed to Stage 2 Appropriate Assessment and an NIS is required to determine the potential of the proposed development to adversely affect the integrity of the European Sites.

Before concluding on the issue of appropriate assessment below, I advise the Board that given that Appropriate Assessment did not form a reason for refusal in the planning decision and did not directly arise in the appeal, it could be considered as raising a new issue at this appeal stage. The Board have the option to seek further information on appropriate assessment and an NIS from the appellant if it so desires. However, given the substantive recommended reason for refusal on traffic grounds and that the issue of appropriate assessment is not new in the overall application, I do not recommend this course of action is necessary.

7.7.4. Stage 1 - Screening Conclusion

On the basis of the information provided with the application and appeal and in light of my assessment above and noting the absence of a Natura Impact Statement such as would inform a stage 2 appropriate assessment, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Stabannan-Braganstown SPA (Site Code 004091), Dundalk Bay SPA (Site Code 004026) or/and Dundalk Bay SAC (Site Code 000455) in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting permission.

7.8. **Other**

7.8.1. Development Contributions

There is no category for the type of development proposed within the current Louth County Development Contribution scheme. Therefore, no standard Section 48 Development Contribution is applicable. In the event of a grant of permission, a special contribution should apply for the purposes of any road improvements or traffic calming measures which would benefit the proposed development where such works would fit the category Section 48(2)(c) of the Act.

7.8.2. Waste Facility Permit

Reference is made by observers to a waste facility permit lodged to Louth County Council environment section which is inferred relates to the appeal site. In this regard, observers raise concern regarding inconsistencies between details submitted with the permit application and the proposal submitted in connection with the planning application and appeal. Of particular concern is the stated reference to 'soil

cleaning resulting in recovery of soil and recycling of inorganic materials' in the permit application.

In their appeal, the appellant states that the Waste facility permit application is currently with Louth County Council and will not be decided until a grant of permission issues. A copy of the application form is attached to the appeal as is a copy of correspondence received from the Local Authority (Infrastructure and compliance). It outlines the proposal for Class 5 and Class 6 activities which I have outlined above.

In any case, the requirement for waste disposal and recovery activities to hold an authorisation is provided for in Part V, section 39 of the Waste Management Acts 1996-2007, including a waste facility permit, which is a separate consent outside of the planning process. The current planning application which is the subject matter of this appeal relates solely to the development as described on the public notice and as set out in the drawings and documents which accompanied the application and appeal.

8.0 Recommendation

- 8.1. On the basis of the above assessment, I recommend that the Board refuse permission for the proposed development for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The development has the potential to result in a significant increase in heavy goods vehicle movements along the local road network, which is not capable of accommodating such additional vehicles safely due to the restricted width and alignment of the road. In the absence of adequately designed passing bays on the existing road infrastructure along the proposed haul route, the Board is not satisfied that the proposed development would not compromise the safety of road users or would not generate an unacceptable traffic hazard.
2. On the basis of the submissions made in connection with the planning application and appeal and in light of the assessment carried out above,

and noting the absence of a Natura Impact Statement, the Board cannot be satisfied beyond reasonable scientific doubt, that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Stabannan-Braganstown SPA (Site Code 004091), Dundalk Bay SPA (Site Code 004026) and Dundalk Bay SAC (Site Code 000455) in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting permission for the development.

Patricia Calleary
Senior Planning Inspector

24th April 2019