



An
Bord
Pleanála

Inspector's Report ABP 303371-19

Development	The filling of lands with inert waste such as clay, stone, soil and concrete (construction and demolition waste) for the purpose of land reclamation
Location	Cloontarriv, Gortatlea, Tralee, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/434
Applicant(s)	Farran Plant Hire Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Michael Horgan
Observer(s)	None
Date of Site Inspection	27 th February 2019
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The site is located in Cloontarriv, Gortatlea, Tralee, Co. Kerry. It is approx. 10 km south-east of Tralee and 18km north-west of Killarney.
- 1.2. The site is located in a rural area of Co. Kerry and it is accessed off a minor local road 1km east of the N22 Killarney to Tralee.
- 1.3. The site itself forms part of a larger agricultural field and is 0.81HA in area. It is set back from the public road and is accessed via an existing agricultural field gate. The landscape is characterised by bogland with some coniferous tree planting and open grasslands. The site is relatively flat, and it is wet underfoot. There are two open land drains on the site located along the western site boundary and the northern field boundary. The Glanageenty River is located 70m west of the site.
- 1.4. Site inspection indicated significant stock piling of material within the agricultural field to the south of the site. The stockpiled material consists mainly of subsoil with some C&D waste also evident.

2.0 Proposed Development

- 2.1. The proposed development would comprise the filling of lands with inert waste such as clay, stone, soil and concrete (construction and demolition waste) for the purpose of land reclamation.
- 2.2. It is proposed to fill the application site (0.81 ha) with 50,000 tonnes of material consisting of 40,000 tonnes of inert waste (subsoil and topsoil) and 10,000 tonnes of construction and demolition waste over a five-year period.
- 2.3. The proposal generally is to raise the level of the land by a maximum of 1.85 metres. The source of the material is not stated. The applicants propose a 10-metre buffer zone next to land drain to the west, in addition to implementing dust control measures.
- 2.4. The proposed development would be subject to a waste permit.
- 2.5. A request for further information was issued by the planning authority on 3rd June 2018 and a response was received from the applicant on 28th September 2018. Further clarification was sought on 23rd October 2018 and revised details submitted

on 6th November 2018. A decision to grant planning permission was issued on 3rd December 2018.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information and clarification of further information, permission was granted for the development subject to five conditions, the following of which are of note:

- C2. Section 48 General Development Contribution
- C3. Types and Quantities of material to be imported to comply with further information received on 28/09/2018.
- C4. Environmental mitigation, site management and traffic management to comply with further information received on 28/09/2018 and 6/11/2018.
- C5. Final use of lands to be for agricultural purposes only.

3.2. Planning Authority Reports

3.2.1. The Planner's Report is the basis for the Planning Authority decision. It includes:

- The zoning provisions for the area and that the "Rural General" zoning is the least sensitive landscape in the County.
- No planning history identified.
- The developmental will not represent a significant visual impact or impact negatively on residential amenity.
- Appropriate Assessment screening found that significant effects are not likely to arise either alone or in combination.
- Environmental Impact Assessment (EIA) screening exercise states that the development would not warrant an EIA having regard to the fact that the application is for further infilling on a site where filling has been on-going for some years.

- The Planner recommended that further information be sought in relation to volume and type of materials, length of time of the works, traffic management measures and measures to address Japanese knotweed on site.
- Following receipt of further information and clarification of further information, the Planner noted the development plan provisions and the reports received. It was considered that the proposal would not have a significant negative visual impact or be seriously injurious to the residential amenity of the area. A grant of permission was recommended subject to conditions on 29/11/2018.

3.2.2. Other Technical Reports

The **Bio-diversity Officer** in her report of 20th November 2018 recommended a condition be attached to any grant of planning permission in relation to the methodology and management of the Japanese knotweed on site.

The **County Archaeologist** in their report of 5th October 2018 stated that no mitigation is required.

Conservation Officer – No observations made

3.2.3. Prescribed Bodies

Fisheries Ireland in their report of 5th October 2018 state that should permission be granted there shall be no interference with watercourses or their immediate banks/bankside vegetation i.e. through bridging, draining or culverting. To prevent soil disposal / machinery movement within the riparian area, watercourses should be fenced at a minimum of 5 metres from the top of river banks with the width of riparian zones increased (if necessary) to satisfy conditions. All mitigation measures to control silt emissions should be in place prior to the commencement of site works to include the control of contaminated run-off from access roads.

4.0 Planning History

4.1. Site

I am not aware of any recent planning applications relating to the subject site.

4.1.1. Surrounding

A **Section 5 Exemption Certificate** was issued by Kerry County Council to the land owner John Jameson in July 2004 for the raising of ground levels of approx. 23.51 acres of land for reclamation purposes at Cloontarriv, Gortlea.

The location of these fill lands has not been identified and I note the restrictions attached to the Section 5 referral schedule have not been included in the documentation submitted by the applicant.

5.0 Policy and Context

5.1. Development Plan

Kerry County Development Plan 2015-2021

The site is located in an area zoned 'Rural General', Section 12.2.1 states that "*it is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development*".

Relevant policies and standards of the Kerry County Development Plan 2015-2021 include:

- Section 4.8.1 relates to Agriculture, which it is stated is the second largest employer in the County.
- Chapter 7 – Transport and Infrastructure
- Section 7.4 Waste Management Aim: *The Council seeks to ensure the provision of the highest standards of waste management and to prevent and control water, air and noise pollution.*
- Chapter 10 - Natural Environment & Flood Risk Management

- Section 10.7.1 Riparian Buffer Zones
- Section 10.12 Invasive Species
- Section 10.19 Flood Risk Management
- Chapter 12 sets out objectives for landscape protections
- Policy objective ZL-1 -Protect the landscape of the County *as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.*

5.2. National Policy and Guidelines

- Southern Region Waste Management Plan 2015-2021.
Section 7.1.3 refers to Construction & Demolition Waste (C&D Waste). Apart from general policies encouraging re-use and recycling and appropriate treatment, the Regional Plan lacks specific policies of relevance to the type of development proposed.
- The Planning System and Flood Risk Management – *Guidelines for Planning Authorities*, (2009)

5.3. Natural Heritage Designations

There are 3 European designated sites within 10km of the site.

- Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161) is located 4.5km northeast of the site.
- Slieve Mish Mountains SAC (site code 002185) is located 6km west of the site.
- Castlemaine Harbour SAC (site code 000343) is located 10km south of the site.

5.4. Environmental Impact Assessment –Preliminary Examination

Notwithstanding the EIA pre-screening carried out on initial receipt of this appeal, the development does fall within a class of development set out in Part 2, Schedule 5 of the Planning and Development Regulations. It is proposed to import 50,000 tonnes

of material over five years. Schedule 5, Part 2, 11(b) of the Planning and Development Regulations requires EIA for the 'Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this schedule'. In this regard, the annual intake has not been established. However, the proposal is to import 50,000 tonnes over 5 years and the applicant's submission in response to the further information requested received 28th September 2018 would indicate the rate of intake would be spread over 5 years, and accordingly it can be assumed that the rate of intake is 10,000 tonnes per annum, and, therefore well under the threshold for EIAR as set out in Schedule 5, Part 2, 11(b) of the Planning and Development Regulations. It is considered, therefore, that the requirement for EIA can be ruled out at the preliminary examination stage.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal from Michael Horgan, Secretary of Lakes and Rivers of Kerry Salmon and Trout Conservation and Protection Association, 2 Upper Cloonbeg, Tralee, Co. Kerry, received by An Bord Pleanála on 4th January 2019, can be summarised in bullet point format as follows:

- The presence of Japanese Knotweed on site.
- No evidence of site notice on site when appellant visited the site. Two dates identified.
- Query whether applicant has a waste facility permit for the project.
- No planning history on the site yet material already dumped on site. Query re. need for retention.
- Impact of additional heavy traffic on minor road network.
- Proximity to adjoining river.
- Reference to original submission which included the impact of the development on wildlife, the need for the development and visual impact following completion of the works.

6.2. **Planning Authority Response**

6.2.1. No further comments.

6.3. **Applicants Response**

- There is no Japanese knotweed on the site. The Japanese knotweed is located on the landholding but not the site. Measures are in place to eradicate the knotweed.
- Previous filling in site was carried out as exempted development. Section 5 Exemption Certificate attached to the submission.
- Site notices were in place.
- Waste permit will be applied for before works commence.
- Development will not involve heavy traffic given the low intensity nature of the development.
- There are no drains, streams or rivers located where the infilling will occur and therefore no effect on salmon and trout rivers in the locality.

7.0 **Assessment**

7.1. **Introduction**

The main issues in this appeal are those raised in the grounds of appeal. The issue of appropriate assessment also needs to be addressed. I consider the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Nature of development
- Visual Amenity
- Invasive Species
- Flooding
- Traffic
- Other Matters

- Appropriate Assessment

7.2. Nature of development

- 7.2.1. The proposed development involves the disposal of inert waste and C&D waste. The site is within the area of the Southern Region Waste Management Plan 2015-2021. The Plan states that annually between 2010- 2012 there was in the region of 1 million tonnes of C&D waste generated. Section 11.2 of the Plan outlines some of the specific issues with management and classification of these wastes, specifically the reuse, recycling and recovery of C&D waste. Apart from general policies encouraging re-use and recycling and appropriate treatment, the Regional Plan lacks specific policies of relevance to the type of development proposed. The Kerry County Council 2015-2021 County Development Plan has a number of waste specific objectives (Chapter 7), although none relate specifically to this type of inert landfill.
- 7.2.2. There is no information provided on the sourcing of material for the site. It seems unlikely that there is sufficient construction or related activity in the immediate area to supply the site and the material will be coming from urban areas under growth pressures such as Tralee or Killarney via the N22. In the absence of more specific policies, I would conclude that the proposed development is in something of a neutral policy environment and should best be judged on its own merits.
- 7.2.3. The appellant claims that works have commenced on site and that the proposed development should be for retention rather than permission. I can confirm from my site inspection that material has been stockpiled in the field, but no work has commenced on the infilling of the site. I consider the issue of the stockpiling in the field an enforcement issue for the Planning Authority and not the subject of this application. Furthermore, I note the Planner's report refers to on-going infilling at this location. A Section 5 exemption certificate for the filling of lands at this location was issued by Kerry County Council to the landowner in 2004. The location of the lands which were the subject of the Section 5 exemption certificate have not been identified and any previous raising of ground levels is not evident on site. This may be as a result of settlement over time, and whilst I note the stockpiled material may be screening some previous infilling, it does not cover 23.51 acres. Therefore, I am

satisfied that in the wider context of the field boundaries there is no visually evident mounding as a result of previous infilling and accordingly no negative visual impact.

- 7.2.4. The nature of the development will require the applicant to seek some form of authorisation under section 39 of the Waste Management Act 1996 (as amended). The type of authorisation required is dependent on the class of waste activity proposed, the waste types and the quantity. The European Waste Catalogue (EWC) Codes identified by the applicant include construction and demolition waste and soil and stones. The type of waste and the quantity would be a class 5/class 6 waste recovery activity and subject to Waste Management (Facility Permit and Registration) Regulations 2007. The activity must have planning permission or be planning exempt before a permit or certificate of registration is issued. Such permits are issued by the relevant Local Authorities.

7.3. **Visual Amenity**

- 7.3.1. The appellant contends that the development will have a negative visual impact. The site is relatively flat, and the proposed development will result in the manipulation of the topography of the site. However, having inspected the site, I considered that the site 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 1.85m, would not significantly alter views of the wider landscape. I also consider that with settlement and appropriate grading, the development will integrate successfully into the landscape. There are no designated Views and Prospects in the vicinity of the site and the immediately adjoining house is in the ownership of the landowner. It is considered, therefore, that the proposed development would not represent a serious visual intrusion.

7.4. **Invasive Species**

- 7.4.1. The presence of Japanese Knotweed is noted at the entrance to the site. As part of the further information requested by the planning authority a management plan for the knotweed was submitted. The Bio-diversity officer in her report of 20th November 2018 raised no objection to the development subject to implementing the proposed methodology and management plan for the Japanese knotweed on site. I

note the applicant has commenced the initial spraying of the knotweed. The proposed management plan is consistent with best practice and I consider this an acceptable approach.

7.5. Traffic

- 7.5.1. The proposed development involves the importation of 50,000 tonnes of material in heavy vehicles over five years. The local rural road system is quiet and while the road surface is quite good, the road is not particularly straight. However, the site is only 1km from the N22. It is stated that HGV volumes will be at rate of 10 trips per week over a five-year period. Access is via an existing entrance and sightline availability is adequate at the entrance. Consequently, I do not consider the volume of traffic proposed excessive or that the traffic generated would represent a traffic hazard.

7.6. Flooding

- 7.6.1. Although next to a river, there is no evidence that significant parts of the site have been subject to flooding. The site is located with a designated OPW drainage catchment and the lands adjoining the site are OPW benefitting lands. The OPW has a statutory duty to maintain the drainage channels/land drains adjacent to the site. The applicants propose that no works would take place within 10 metres of a watercourse or land drain in accordance with Section 10.7.1 – Riparian Buffer Zones of the Development Plan and the requirements of Fisheries Ireland. This is acceptable.
- 7.6.2. It is not entirely clear as to how the works would affect run-off to the river in the long run, but it is likely to be slightly reduced due to better infiltration. I would therefore consider that the proposed works do not constitute a flood hazard and would not have downstream flooding impacts.

7.7. Other Matters

7.7.1. The appellant states that there was no site notice erected on site, However, I note evidence of the presence of a site notice on site in the photographs included in the Planning Officer's report.

7.8. **Appropriate Assessment**

- 7.8.1. There are 3 European Sites within 10km of the appeal site. The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161) is located 4.5km northeast of the site, the Slieve Mish Mountains SAC (site code 002185) is located 6km west of the site and the Castlemaine Harbour SAC (site code 000343) is located 10km south of the site.
- 7.8.2. Having regard to the nature and scale of the proposed development, impact pathways would be restricted to hydrological pathways. In this regard, there is no direct pathways or linkages with the Slieve Mish Mountains SAC (site code 002185) and the Stack's to Mullaghareirk Mountains West Limerick Hills and Mount Eagle SPA (004161) as these sites are upland of the site.
- 7.8.3. There is a potential link via the water environment (the impact 'pathway'), with the Natura 2000 site (the 'receptor'), the Castlemaine Harbour SAC (site code 000343). However, given the distance from the proposed development to Castlemaine Harbour SAC (site code 000343) at 10km and the small scale of the development, it is not considered that there is any likelihood of significant negative effects on the SAC.
- 7.8.4. I consider it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that having regard to the nature of the development and the separation distance to any European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission be **GRANTED** for the proposed development having regard to the reasons and considerations and subject to conditions as set out below.

9.0 REASONS AND CONSIDERATIONS

Having regard to the existing condition of the site and the proposal to remediate the site and restore it to beneficial agricultural use, it is considered that the proposed temporary use for the importation of soil and stone to fill the ground, subject to compliance with the conditions set out below, would be in accordance with the provisions of the Kerry County Development Plan, would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

10.0 CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 28th September 2018 and the 6th November 2018, 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. A plan for the staged filling and reseeded of the fill material shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of clarity and in the interest of proper planning and sustainable development.

3. (a) The applicant shall maintain a 10-metre buffer from any watercourses or land drains with appropriately graded slopes to the fill body to prevent sedimentation and collapse of materials into the watercourses/drains. The fill material shall be reseeded as quickly as possible and in stages to minimise run off from bare soil.

(b) To prevent soil disposal / machinery movement within the riparian area, watercourses shall be fenced at a minimum of 5 metres from the top of river banks.

(c) Mitigation measures to control silt emissions shall be in place prior to the commencement of site works to include the control of contaminated run-off from access roads.

(d) Revised drawings and documentation shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interests of the proper planning and sustainable development of the area and adequate development management.

4. The Japanese Knotweed shall be managed in accordance with the management plan submitted with the application on 6th November 2018. An annual update report to include photographs shall be submitted to the Planning Authority for their written approval.

Reason: In the interest of clarity and the protection of the environment during construction and operational phases of development.

5. The hours of operation shall be limited to 08.00 -17.00 Monday to Friday and 08.00 -13.00 Saturday.

Reason: In the interest of residential amenity.

6. (a) Prior to the commencement of the development a system of advanced warning signs shall be erected along the access road to the site as agreed with the planning authority prior to the commencement of development.

(b) A wheel wash facility shall be installed at the exit of the site.

(c) The public roadway shall be kept clean and tidy at all stages of the development.

Reason: In the interest of traffic safety.

7. The final use of the lands after the completion of the in-filling or importation of materials shall be for agricultural purposes only.

Reason: In the interest of clarity

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

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Irené McCormack
Planning Inspector

21st March 2019