



An
Bord
Pleanála

Inspector's Report ABP-303511-19

Development	To retain (1) revised site boundaries (2) diversion to existing water stream.
Location	Monelty & Laragh, Stradone, Co. Cavan
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	18185
Applicant(s)	Laragh Sports Partnership.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Paul & Mairead Monahan.
Observer(s)	None.
Date of Site Inspection	02 nd of April 2019
Inspector	Karen Hamilton

1.0 Site Location and Description

- 1.1. The site is located in the rural settlement of Laragh, Co. Cavan, c. 10km east of Cavan and c. 2km off the N3 at Stradone. The site is adjacent to a National School and construction works are currently underway for the development of a sports facility including a playing field, dressing rooms, walk along track, lighting and access permitted under (PL02.245290 (Reg Ref 15/71).
- 1.2. The subject site relates to small part of the site along the east, and includes the diversion of a stream, running around the perimeter of the site and associated works, including a change in the site boundary.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
 - a) Revised site boundaries and site layout ,
 - b) Diversion to existing water stream and all ancillary site works to previously approved planning ref 15/71.

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission subject to 13 no. conditions of which the following are of note:

C 2- Requirement to obtain a discharge licence.

C 3 & 4- Submission of information of the waste water treatment system and soil polishing filter.

C 5- Compliance with Inland Fisheries Ireland Guidance (IFI).

C 12- The Statement of Screening for Appropriate Assessment submitted with the Planning Register Reference 15/71 shall be adhered to in full.

C 13- All mitigation measures outlined in Section 5.3 of the Flood Risk Assessment submitted with the current planning application shall be carried out in full and in strict compliance with the lodged documents.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission, refers to compliance of conditions for an existing permission on the site (Reg Ref 15/71) and the submission by IFI and the Environment Section and issued a request for further information as summarised below:

- Submission of evidence of all relevant communications with Inland Fisheries Ireland (IFI) to demonstrate they are satisfied with the diversion.
- Submission of a method statement for the diversion.
- Submission of details of a suitably qualified person who shall monitor all works in relation to flood mitigation measures in compliance with condition no. 4 (a) of 15/71.

Following the further information submission on the 27th of November 2018, the planner was satisfied the proposed development was acceptable.

3.2.2. Other Technical Reports

Environment Section- No objection subject to conditions.

3.3. **Prescribed Bodies**

Inland Fisheries Ireland- No objection to the proposal.

3.4. **Third Party Observations**

One submission was received from the appellant and the issues have been addressed in the grounds of appeal and are summarised below:

- Failure to comply with conditions of the parent permission,
- Inadequate revised flood risk assessment for the proposed development,
- Continued unauthorised development.

4.0 Planning History

PL02.245290 (Reg Ref 15/71)

Permission granted for a new sports facility to include a playing field, dressing rooms, walking track, lighting and access.

Condition No. 3 : Prior to the commencement of development, full design details and a method statement for the proposed works to the existing land drain to facilitate the re-direction of the central stream on site as per Dwg_SK07 in the Flood Risk Assessment shall be submitted to, and agreed in writing with, the planning authority. This shall include the timing and duration of the works. The works shall be carried out in accordance with the agreed plans.

Condition No 4: Required the submission of full design details for the proposed flood compensatory measures as set out in the Flood Risk Assessment.

Condition No 6: The development shall be managed in accordance with the Construction Management Plan.

5.0 Policy and Context

- 5.1. Guidelines on Protection of Fisheries during Construction works in and adjacent to Waters (Inland Fisheries Ireland, 2016)
- 5.2. The Planning System and Flood Risk Management Guidelines for Planning Authorities (OPW 2019).
- 5.3. **Cavan County Development Plan 2014-2020**

The land is located outside the development boundary of any designated village/town.

SCP14- To meet the recreational needs of all communities and individuals in the county.

SCO30- Seek to ensure the provision of recreation facilities to cater for different abilities, ages and interests within the County.

5.4. **Natural Heritage Designations**

The site is located downstream c. 11km south east of Lough Oughter And Associated Loughs SAC (site code 0007) and Lough Oughter Complex SPA (site code 4049) and c. 25km to the north of River Boyne And River Blackwater SAC/ SPA.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal are submitted from residents in the vicinity of the site in relation to the impact of the proposed development on their property and the issues raised are summarised below:

- There are a number of issues which the applicant has not complied with in the permitted development PL02.245290 (Reg Ref 15/71).

Development description

- The development description refers to two townlands Monelty and Laragh although the unauthorised diversion is in the townland of Longfield which is not included in the public notices.
- The proposal only relates to the unauthorised works carried out to date and not the requirement to complete the development.
- The Board can only request that the applicant revert to the original permission or refuse the proposal.

Site notice

- The site notice is in the incorrect location which is a breach of Article 19 of the planning regulations.
- The notice was placed on a vehicular entrance which does not form part of the site and should have been invalidated in the first 5 weeks.
- If the Board upholds an invalid permission it will set a very poor precedent for others to follow and lead to a potential Judicial Review.

Appropriate Assessment Screening

- No stage 1 AA Screening Report was submitted.
- The planners report refers to an AA Screening Assessment carried out for the 2015 application and by An Bord Pleanála Inspector.
- The Screening Assessment refers to best practice measures and states that it would not be likely to have a negative impact on the European Site, therefore a Stage II assessment should have been carried out.

Case Law

- A 2018 judgement “People over Wind and Peter Sweetman v Coillte” ruled that mitigation measures could not be taken account at the screening stage of an appropriate assessment.
- It also stated that if any mitigation measures were proposed then a stage II assessment is required.
- The separation distance is irrelevant as stated in a further case “Commission v Germany (Case C-142/16) CJEU which states that even where the site is some 600km upstream of the project the implications of the impact on conservation objectives is required.
- Under Section 34 (12) of the Act, the planning authority is precluded from granting permission to retain unauthorised development where the application would have required an Appropriate Assessment.

Levels and Flooding

- There are concerns as to the levels shown on the site layout plans and sections.
- The proposed finished level of the playing pitch and proposed compensatory measures proposed to deal with the surface water run-off and additional run-off from the development.
- In the 2015 application a difference in ground levels of up to 2.5m was indicated on the sections between the playing pitch and the flood plain to the north.

- The works carried out to date do not suggest that the levels are accurate.
- The proposed works could lead to potential flooding which will impact on the appellant's house, c. 200m upstream for the site.
- The flooding report should be assessed in full as the Council do not appear to have assessed it in great detail.
- The Inland Fishers Ireland sought measures cannot be achieved post development i.e. measures in place to minimise potential damage during construction, as the diversion has already taken place.
- A stage II AA should be required due to the potential contamination of the tributary of a River that leads to a Natura 2000 site.

6.2. Applicant Response

A submission has been received by an agent on behalf of the applicant which may be summarised as follows:

- A detailed flood modelling assessment accompanied the application (submitted with the appeal) and clarifies that the proposed development does not cause any material change to in flood risk relative to the previously consented development.
- The FI response to the planning authority confirmed that IFI was satisfied with the diversion of the watercourse, the method statement for the diversion of the watercourse and the details for the project supervision in respect of flood mitigation measures.
- The proposed development complies with national, regional and local planning policy.
- The proposal complies with the permission granted under PL02.245290.

Development Description

- Article 18 (1) (a) of the Regulations provides reference to the location, townland or postal address of the land or structure to which the application relates (as may be appropriate).

- The development description also includes “Stradone” which is clearly identifiable and the location is in line with the previous permission (Reg Ref 15/71).

Appropriate Assessment

- Reference to the legislative requirements for Appropriate Assessment is included.
- Circular NPW 1/10 and PSSP 2/10 both state that the first test is to establish whether an appropriate assessment is required and the first two tests are included in Article 6 (3) , connection to the management of the site and/ or likely to have a significant effect on the Natura 2000 site.
- The screening report was not required as the previous development also required works which redirected the stream on site.
- The screening report for 15/71 and An Bord Pleanála determined that a stage 2 (Natura Impact Statement) was not required.
- A screening assessment was carried out by the planning authority for this (Reg Ref 18/185) application and is considered robust.
- The best practice measure used to comply with IFI guidelines and “in-stream” works does not equate to mitigation measures required under case law C 323-17.
- The EU Judgment noted the measure required under this project “*People over wind and Peter Sweetman v Coillte*” refers to as “protective measures” and should be understood as denoting measures that are intended to avoid or reduce harmful effects of the envisaged project on the site concerned.

Levels and Flooding

- Detailed topographical surveys were carried out both to inform the application drawings and the flood modelling.

Compliance with conditions

- All matters on non-compliance within the subject lands have been addressed.

Documents accompanying the application.

1. Flood Risk Assessment (FRA) for the realignment/ diversion of the watercourse (also submitted with the application).

6.3. Planning Authority Response

A response was received from the Planning Authority which is summarised below:

Site Notice

- The site notice complies with the requirement of Article 19(1) (c) of the Regulations which requires the notice to be “securely erected or fixed in a conspicuous position on or near the main entrance to the land or structure concerned from a public road”.
- The notice was placed at the entrance to the school, the most visible and legible for the public.

Appropriate Assessment

- The planning authority notes the case law referred to in the submission and has determined the specific nature, scale and extent of the development and separation of from the nearest European Site, that a Stage II is not required.

Flood Risk

- A Flood Risk Assessment and method statement for the stream diversion was submitted by way of Further Information and consultation was undertaken with IFI.

6.4. Observations

None received.

7.0 Assessment

7.1. The main issues of the appeal can be dealt under the following headings:

- Planning History
- Diversion of Stream
- Flooding and Ground Levels
- Procedural
- Appropriate Assessment

Planning History

7.2. Planning permission has recently been granted for the development of a new sports facility on the site (PL02.245290 (Reg Ref 15/71) including a playing field, dressing room, walking track, lighted and access. A stream runs around the boundary of the entire site and there is also a stream across the centre of the site. The FRA of the parent permission included the infilling and re-direction of the central stream to integrate with the stream around the site. The Inspectors report on the previous application noted the works proposed to facilitate these works (DWG_SK07), attached to Appendix B of the FRA, which illustrates the abandonment and infilling of the central stream. Condition No. 3 of the grant of permission required the submission of full design details and a method statement to indicate the works required to re-direct the central stream, further discussed below.

Re-direction of the Stream

7.3. The proposed development includes the retention of the diversion of c. 70m of stream along the east of the site which includes the alteration of the site boundary as previously granted for the parent permission (PL02.245290 (Reg Ref 15/71). The grounds of appeal are concerned the proposed development is not in keeping with the parent permission and will have a negative impact.

7.4. Condition No. 3, of this permission, required the submission of full design details and a method statement for the proposed works to the existing land drain to facilitate the re-direction of the central stream on site as per Dwg_SK07 in the Flood Risk Assessment shall be submitted to, and agreed in writing with, the planning authority,

prior to the commencement of development and shall include the timing and duration of the works.

- 7.5. The FRA attached to the proposed development, similar to that FRA for the parent permission, describes the proposal as a slight alteration with the revised alignment hydraulically more efficient than the consented alignment. The FRA is discussed in more detail below.
- 7.6. Following a further information request, confirmation of correspondence with the IFI, submission of a method statement and details of the suitably qualified person required to monitor the flood mitigation works, the Planning Authority considered the proposal acceptable. The IFI response confirms that monitoring was undertaken during the diversion of the watercourse. I note the scale of the works undertaken, the report of the Environment Section, confirming no objection, and I consider the proposed development acceptable.
- 7.7. Dwg no. RT 12 052-01 submitted with the proposed development details the re-directed watercourse and states that the central stream will be backfilled or piped and diverted to the main stream. Compliance with Condition No. 3 remains a requirement of planning as the proposed development, to be retained, is in addition to the initial works proposed for the central stream. I am satisfied that this issue can be sufficiently dealt with by a suitable condition linking any grant of permission to the terms of the parent permission.
- 7.8. Having regard to the scale of the works proposed and a condition to link the proposal to the parent permission, I do not consider the diverted stream will have a significant negative impact on the surrounding area or any property in the vicinity of the site.

Flooding and Ground Levels.

- 7.9. The amended FRA which accompanied the application, was also submitted with the applicant's response to the grounds of appeal, and detailed the implication of the diversion of c. 70m of watercourse channel. It is stated that the revised alignment is hydraulically more efficient than the consented alignment and the existing FRA determined that flooding to the site was substantially dictated by the Laragh River and a downstream restriction, with any effect caused by the tributary stream (affected by the variation) of lesser significant at the site.

- 7.10. The revised FRA used the same modelling approach as the original FRA and concluded that the findings of the previous FRA remain valid and there is no material change in flood risk relative to the consented development. I note the Inspector's Report on the parent permission assessed the FRA in conjunction with the national flood guidance and the proposed use and considered the proposed flood compensatory measures acceptable. Condition No. 4 requires the submission of full details of the proposed flood compensatory measures set out in the FRA to be agreed in writing with the planning authority. Having regard to my previous assessment and the remaining works required for the entire site, I consider this condition requiring the submission of full details of flood compensatory measures remains relevant. In light of my assessment above on the re-direction of the stream, I consider any grant of permission is linked to the parent permission.
- 7.11. A very small part of the re-profiling works (the western slope to the bank) was proposed in the parent permission, just outside of the site boundary. The report of the Inspector considered it would be possible to slightly alter the re-profiling within the site boundary if necessary. Upon site inspection I noted the location (the east of the site), of the old stream in comparison to the diverted stream and I do not consider there is a significant variation to the ground levels.
- 7.12. Therefore, having regard to the location, scale and nature of the works to be retained, I do not consider the proposal will have a significant negative impact on the surrounding area by way of exacerbating any flood issues.

Procedural

- 7.13. The grounds of appeal raised concern over the townland included in the development description of the proposed development and the location of the site notices. The response from the planning authority, to the appeal, considered the site notice and development description where in keeping with the details of the parent permission and complied with Article 19(1) (c) of the Planning and Development Regulations 2001, as amended, which I consider reasonable.

Appropriate Assessment

- 7.14. The site is located downstream c. 11km south east of Lough Oughter And Associated Loughs SAC (site code 0007) and Lough Oughter Complex SPA (site code 4049) and c. 25km to the north of River Boyne And River Blackwater SAC/

SPA (site code 004232 & 002299). A source-pathway-receptor between the site and the designated SAC is provided by the fact that the Laragh River is a tributary of the Annalee River, the lower stretches of which are within the Lough Oughter and Associated Loughs SAC.

- 7.15. The qualifying interests for the SAC are eutrophic lakes; bog woodland; and the otter. Qualifying interests for the SPA include great crested grebe, whooper swan, wigeon, and wetlands and waterbirds. The relevant conservation objectives for both sites are to maintain the favourable conservation status for the Qualifying Interests.
- 7.16. An Appropriate Assessment screening report was submitted with the parent permission (PL02.245290, Reg Ref 15/71) which concludes that a stage 2 AA was not required. The report of the Inspector considered that having regard to best practice measures to protect the water quality, submitted in the AA screening report/application, and the distance of the European Site, would not be likely to have a significant effect on the any site's Conservation Objectives.
- 7.17. The grounds of appeal have raised concern over the use of best practice measures in the assessment of the initial application to determine that a stage 2 assessment is not required. Reference to a recent judicial review in 2018, "*People over Wind and Peter Sweetman v Coillte*" which ruled that mitigation measures cannot be taken into account at the screening stage for appropriate assessment.
- 7.18. The proposed development relates to c. 70m of stream to be diverted, and is part of a larger redevelopment of the playing pitch facility. The applicant states that consultation was undertaken during the works with IFI, and the development complies with the Fisheries Guidelines. IFI confirmed, in a submission to the application, they were involved in monitoring the works during construction. I note the IFI Guidance and the measures required to prevent a negative impact on water quality. I also note the nature and scale of the works undertaken to divert the stream and I do not consider the use of best practice measures is a necessity to undertake a screening for appropriate assessment for the European Sites upstream and I can conclude that the having regard to the proposed development and separation distance from any European site there will be no impact on any SAC, SPA or NHA and there is no need to proceed to a Stage II AA.

7.19. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Lough Oughter SAC (site code 0007) or Lough Oughter Complex SPA (site code 4049) or any other European site, in view of the sites' Conservation Objectives. A Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

9.0 Reasons and Considerations

Having regard to the planning history, the location of the site, the scale and nature of the works proposed and the proposed compensatory flood mitigation measures, it is considered that subject to compliance with the conditions set out below, the proposed development would not increase the flood risk in the area, would not injure the amenity of the property in the vicinity and would not have a significant negative impact on the conservation objectives of any European sites, in particular Lough Oughter And Associated Loughs SAC (site code 0007) and Lough Oughter Complex SPA (site code 4049). The proposed development would, therefore, 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, 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. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 07th of December 2015 under appeal reference number PL02.245290, planning register reference number Reg Ref 15/71, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission(s).

Karen Hamilton
Planning Inspector

29th of April 2019