



An
Bord
Pleanála

Inspector's Report ABP-304853-19

Development

Land reclamation for use as agricultural land.

Location

Eadestown Middle, Stratford on Slaney, County Wicklow

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

1999

Applicant(s)

Herbert Stephenson Jnr

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Herbert Stephenson Jnr

Observer(s)

None

Date of Site Inspection

15th November 2019

Inspector

Hugh Mannion

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1.0 Site Location and Description

- 1.1.1. The application site has a stated area of 4.56ha. It is rectangular in shape and stretches north to south along the east of a minor road in Eadestown Middle, Stratford on Slaney, County Wexford. Baltinglass is about 6kms to the southwest on the N81 which runs to the west of the area where the site is located. The site is low laying; a stream enters the site in the north-western corner and flows south along the road boundary. This stream exists the application site in the southwestern corner under the public road and continues to flow west. Another, smaller, stream bisects the site flowing from the east to the west into the main channel. There is at least one and perhaps two culverts from the opposite (western side) of the public road which also drain into the stream on site. The vegetation on site, rushes, sedges, alder and willows is indicative of wet soil conditions.
- 1.1.2. The public road is narrow, has no median line, footpaths, cycle paths or public lighting. It is relatively straight, and the site entrance is over an existing access laneway which serves a residential use to the east. There is a high point to the west of the road, Saundersgrove Hill, and another to the east, Eadestown hill.

2.0 Proposed Development

- 2.1.1. The proposed development comprises land reclamation through the introduction of fill material comprising clay, silt, sand gravel or stone on 3.1ha for the purpose of improvement of the land for agricultural use and ancillary works including portable truck wheel wash and office/chemical toilet with access with from the public road via existing laneway and junction at Eadestown Middle, Stratford on Slaney, County Wicklow
- 2.1.2. **Planning Authority Decision**
- 2.1.3. Decision – Refuse permission for the reason that;
- 2.1.4. Having regard to the inadequacy of the road network in terms of width, gradient and structural condition, the scale of the proposed development and the inadequate justification that the works are necessary for the use of the lands for agriculture the

proposed development would endanger public safety by reason of traffic hazard and provide an undesirable precedent for similar development.

2.1.5. **Planning Authority Reports**

2.1.6. Planning Reports

2.1.7. Initially the planning authority sought further information relating to;

- The submission of a traffic report detailing the characteristics of the local road network and setting out any mitigation measures required.
- Justification for the required depth of fill in particular the potential for the finished ground level to exceed that of adjoining lands.
- Demonstrate the maintenance of sightlines after the development is completed. Hedgerow trimming is insufficient guarantee of sightlines.
- Submit a noise/dust impact assessment.
- Submit an assessment of the surface water runoff regime and expected changes to surface water flow patterns.

2.1.8. The applicant responded to the request for further information on 24th May 2019.

2.1.9. **Other Technical Reports**

2.1.10. **Waste Management Section** noted the site features, in particular the streams on site. The road impacts should be assessed by the area engineer. A waste facility permit is required. A grant of permission is recommended limiting the rate of importation to 5 truckloads per day, metalling of the site access road and a portable wheel wash. Phase 1 should be completed and grassed before phase 2 is commenced.

2.1.11. **Roads Engineer** sought further information on passing points along the road haulage route where the road is about 4.5m to 5.3m wide.

2.1.12. **Inland Fisheries Ireland** notes that the proposed development borders the upper reaches of a tributary of the Tuckmill and Slaney River. The Slaney River has excellent stocks of salmon, brown trout and sea trout, river lamprey, sea lamprey

and Brook Lamprey and is a SAC. The IFI welcomes the buffers provided on site and has no objection to the proposed development.

3.0 Planning History

None relevant.

4.0 Policy and Context

- 4.1.1. The Eastern-Midlands Waste Region, Connacht-Ulster Waste Region and the Southern Waste Region have published the **Construction and Demolition Waste Soil and Stone Recovery/Disposal Capacity** study as part of their Waste Management Plans 2015-2021. In relation to the Eastern-Midlands region which covers Wicklow the report estimates that there was a capacity of 85,210 tonnes in the county at the beginning of the period. Amongst the conclusions of the report was that the capacity for the recovery of spoil and stone, particularly in Dublin and eastern counties, the excess capacity at the beginning of the period of the study will be quickly eroded and that waste permit limits should be expanded from 100,000 tonnes.
- 4.1.2. The **Waste Management (Facility Permit and Registration) Regulations 2007** as amended provide that a waste permit shall be required from the local authority for the disposal of soil to a maximum of 100,000 tonnes, or in certain circumstance 200,000. Depending on notification to the EPA soil/stone may be classified as other than waste and the limit can be 200,000.
- 4.1.3. **European Communities Environmental Objectives (Surface Waters) Regulations 2009**, as amended, implement the Water Framework Directive in so far as it is related, *inter alia*, to the protection of surface water. Surface water is defined as inland waters except ground water. Article 5 requires that a public authority shall not, in the performance of its functions, undertake these functions in a manner that knowingly causes or allows deterioration the chemical status of ecological status (or ecological potential as the case may be) of a body of surface water.

- 4.1.4. **Irish Wetlands Types - An Identification Guide and Filed Survey Manual** (EPA 2018) provides a wetland habitat typology and a guide to the indicators which indicate the presence of wetlands.
- 4.1.5. **Development Plan**
- 4.1.6. The Wicklow County Development Plan 2016-2022 is the relevant county development plan for the area. Table 10 of the Plan sets out the landscape classification categories adopted by the planning authority. The site is within an area of high amenity designated 3rd in an ascending order of 6 designations and in the Baltinglass Hills. These are described as 3(d) - The rolling undulating terrain of the hills around Baltinglass, characterised by the existence of important archaeological remains and monuments. This area is of significant heritage value while also forming a key tourist attraction within this area.
- 4.1.7. In relation to water systems within the County the Development Plan sets out several objectives;
- 4.1.8. **NH20** To facilitate the implementation of the EU Water Framework Directive and associated River Basin and Sub-Basin Management Plans and the EU Groundwater Directive to ensure the protection, improvement and sustainable use of all waters in the County, including rivers, lakes, ground water, coastal and estuarine waters, and to restrict development likely to lead to a deterioration in water quality.
- 4.1.9. **NH21** To resist development that would interfere with the natural water cycle to a degree that would interfere with the survival and stability of natural habitats.
- 4.1.10. **NH22** To prevent development that would pollute water bodies and in particular, to regulate the installation of effluent disposal systems in the vicinity of water bodies that provide drinking water or development that would exacerbate existing underlying water contamination
- 4.1.11. **NH23** To minimise alterations or interference with river / stream beds, banks and channels, except for reasons of overriding public health and safety (e.g. to reduce risk of flooding); a buffer of generally 10m along watercourses should be provided (or other width, as determined by the Planning Authority) free from inappropriate development, with undeveloped riparian vegetation strips, wetlands and floodplains generally being retained in as natural a state as possible. In all cases where works are being carried out, to have regard to Regional Fisheries Board "Requirements for

the protection of fisheries habitat during the construction and development works at river sites”

4.1.12. NH24 To ensure that any development or activity with the potential to impact on ground water has regard to the GSI Groundwater Protection Scheme.

4.1.13. **Natural Heritage Designations**

4.1.14. Not relevant.

4.1.15. **EIA Screening**

4.1.16. Class 11(b) of Part 11 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, requires the submission of an EIAR for projects for the disposal of waste with an annual intake greater than 25,000 tonnes. The originally proposed development comprised the importation of not more than 24,750 tonnes per year over 4 years (see application cover letter received by planning authority on 4th February 2019). That was revised downwards in the further information submission to 60,000 tonnes over 4 years to reduce the number of truck loads/day. On the basis of these figures the planning authority concluded that an EIAR is not required.

4.1.17. This is an application for development within a class but not exceeding the threshold for submission of an EIAR. Article 103(1) of the regulations requires that in such a case the planning authority make a determination as to if the proposed development would be likely to have significant effects on the environment. Article 103(3)(v) sets out a number of circumstances which may trigger the requirement for submission of an EIAR – one of these is the potential to impact on a European site. Article 103(3) provides that the criteria set out in the 7th Schedule should be had regard to when considering the necessity for submission of an EIAR.

4.1.18. Section 1 of Schedule 7 lists the characteristics of a proposed development which may require EIAR. These are;

- the size of the proposed development,
- the cumulation with other proposed development,

- the use of natural resources,
- the production of waste,
- pollution and nuisances,
- the risk of accidents, having regard to substances or technologies used.

4.1.19. Of these characteristics the size of the proposed development is significant since the proposed deposition of material is 24,950 tonnes per year and the threshold is 25,000 per year. Additionally, I consider that there is a risk of water pollution arising both in the filling stage with material deposition being carried out and machinery moving in a very wet environment and in the finished stage where run off triggered by rain is likely to enter the adjacent water course.

4.1.20. The environmental sensitivity of the site and nearby areas should be considered under the headings of;

- the relative abundance, quality and regenerative capacity of natural resources in the area,
- the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (a) wetlands,
 - (b) coastal zones,
 - (c) mountain and forest areas,
 - (d) nature reserves and parks,
 - (e) areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC,
 - (f) areas in which the environmental quality standards laid down in legislation of the EU have already been exceeded,
 - (g) densely populated areas,
 - (h) landscapes of historical, cultural or archaeological significance

4.3.6 Of these characteristics the location of the application site within a wetland is significant. The application states that the site has a relatively high biodiversity although this exists elsewhere in the locality. The wetland will be significantly altered and impacted upon through the loss of habitat and species. Additionally, I consider that there is a risk of water pollution reaching a European site through a hydrological connection between the European site and the application site.

4.3.7 The characteristics of potential impacts which may trigger the requirement for an EIAR are:

- The extend of the impact (geographical area and size of the affected population).
- The trans-frontier nature of the impact,
- Magnitude and complexity of the impact,
- Probability of the impact, and
- The duration, frequency and reversibility of the impact.

4.3.8 I consider that the area of impact is relatively small (between 3 and 5 ha) but it is certain, long in duration and, for the habitats involved, irreversible.

4.3.9 I conclude, based on, the forgoing that the proposed development is of a nature, location and gives rise to such potential impacts as to require submission of an EIAR and carrying out of an environmental impact assessment.

5 The Appeal

5.1 Grounds of Appeal

- The proposed development comprises the importation of 24,750 tonnes of soil each year for 4 years to raise the site level of 3.1ha by 1.3m. The operation would give rise to about 5 truckloads per day for 167 days per year.
- The local roads are in good condition. The application included a traffic impact assessment which concluded that the road network could accommodate the limited traffic generated by the proposed development.

- The field/site is currently wet and unsuitable for farming. The objective is to raise the site level to make the field suitable for agricultural use. This is a reasonable justification for the proposed works.

5.2 Planning Authority Response

- None

5.3 Observations

- None

6 Assessment

This assessment will address; landscape impact, road safety, water pollution, appropriate assessment screening.

6.1 Landscape Impacts.

6.1.1 The site is in an area designated as an “area of high amenity” in the County Development Plan which is of lower landscape importance than Mountain and Lakeshore Areas of Outstanding Natural Beauty and Coastal Areas of Outstanding Natural Beauty. The immediate area of the site and the adjoining road is low laying and there is high ground on the east (Eadestown Hill) and to the west (Saundersgrove Hill).

6.1.2 Having regard to the location of the site outside any area of outstanding natural beauty, its low laying location relative to nearby landscape features I am satisfied that the proposed development will not negatively impact on the visual amenity of the area.

6.2 Road Safety

6.2.1 The application site is about 2kms to the east of the N81 between Baltinglass to the south and Blessington to the north. The road fronting the site is linked to the N81 to the north by the L8799 and to the south by the L8291. The proposed haul route is

from the N81, along the L8291 to its junction with the road fronting the site and south along this route to a private lane running along the northern site boundary.

- 6.2.2 On foot of a Roads Department report the planning authority sought additional in relation to (a) the physical capacity of the road to accommodate the HGV traffic expected to be generated by the proposed development along with any mitigation measures required and (b) additional means of maintaining sightlines on the road along with trimming hedgerows.
- 6.2.3 The applicant responded (see principally the Transport Insights report received by the planning authority on 24th May 2019) by assessing three aspects of the road fronting the site; carriageway width, verge width and edge of carriageway levels.
- 6.2.4 The carriageway width on the haul route between the L8799 and the site entrance is between 4.5m and 4.8m wide. The verges are between 1.5m and 4.9m. In recognition of the restricted width two passing bays (see figure 3.3 in the Transport Insights report) are proposed between the lane accessing the site and the L8799. There are no bends on this section of road. There is a crest on this section of road, but this does not represent a constraint on visibility. Finally, in relation to visibility the report confirms that the TII requirement of 160m sightline at the site access onto the public road towards the junction with the L8799 will be achieved by the setting back of the hedge on the eastern side of the road within the blue line denoting applicant's ownership on the submitted layout. The application as amended by the submission of additional information also proposes a reduction of the amount of fill from an original 75,000 tonnes to 60,000 tonnes which would reduce the HGV trips from 10 per day to 8.
- 6.2.5 The planning authority's road's department did not comment on the further information submission, but the planner's report stated that the roads advice was that the further information was unsatisfactory.
- 6.2.6 I carried out a site inspection of all the roads referred to in the application and likely to be impacted upon by the proposed development. The distance from the site entrance along the public road to the junction with the L8799 is about 700m. The assessment submitted with the application and further information is accurate in relation to the width and horizontal and vertical alignment of the road. While the road network, and in particular the haul route, is narrow and without footpaths this reflects

the rural nature of the area and the low traffic volumes likely to use it. The road is not a link between any population centres or community facilities. There are two houses with access to the haul route between the site entrance and the junction with the L8799 and 9 houses on the L8799 up to the N81. Having regard to these factors, to the purpose of the application to improve the quality of agricultural land, to the time limited nature of the proposed development and the measures, including passing bays and amendment of hedgerow layouts submitted with the application, I conclude that the proposed development will not endanger public safety by reason of traffic hazard.

- 6.2.7 It may be noted, in the event of the Board deciding to grant permission, that a condition can be attached requiring the payment of a special contribution under section 48(2)(c) for any road works specifically required to accommodate the proposed development.

6.3 Water Pollution

- 6.3.1 The EPA have published an Irish Wetlands Types- An Identification Guide and Field Survey Manual (2018) which follows the Ramsar Convention in defining wetlands as “areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres.” The AA screening states that the soil is acidic and peaty, that the vegetation includes reeds and sedges, and alder and willows. The site is relatively high in biodiversity. These statements tally with my on-site observations and the flora are consistent with the characteristics of wetlands set out in the Irish Wetlands Types manual. In addition to the sources of water in the site set out in the application (the stream entering in the northwest corner, the stream running along the northern site boundary, the east/west stream in the centre of the site and the spring within the site) there is at least one and possibly 2 culverts draining land to the west of the public road via a culvert(s) under the road into the site.

6.3.2 The EC Environmental Objectives (Surface Water) Regulations 2009, as amended, in part implement the Water Framework Directive. Article 5 requires that a public authority shall not, in the performance of its functions, undertake these functions in a manner that knowingly causes or allows deterioration the chemical status of ecological status (or ecological potential as the case may be) of a body of surface water. I note the submission from Inland Fisheries Ireland but do not draw the same conclusion from the material submitted for the reasons set out below.

6.3.3 It is an objective of the planning authority as set out in the County Development Plan to ensure the protection and improvement of all surface waters in the county including rivers and lakes, to resist development that would interfere with the natural water cycle to a degree that would interfere with the survival and stability of natural habitats, to prevent water pollution and to minimise alterations or interference to river/stream beds, banks and channels. Notwithstanding the measures set out in the application (including buffer zones between the streams on site and the filled area, piping and attenuation ponds) I conclude that the loss of wetland habitat and changes to the water cycle within the application site and the potential for release of pollutants into the river system would materially contravene an objective set out in the County Development Plan and be contrary to the proper planning and sustainable development of the area.

6.4 Appropriate Assessment Screening.

6.4.1 The applicant submitted an AA screening report which identified 4 Natura 2000 sites within 11.5kms of the application site. These are the Slaney River Valley SAC (000781), the Wicklow Mountains SAC (002122), Wicklow Mountains SPA (004040) and River Barrow and River Nore SAC (0002162). The report is silent on why it screened out River Barrow and River Nore SAC (0002162). The report screened out the Wicklow Mountains SAC (002122), Wicklow Mountains SPA (004040) because they "lie above the level of the development so cannot be affected".

6.4.2 The overall aim of the Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. The NPWS has set out specific conservation objectives for the qualifying interests which comprise habitats and species for which the Slaney River Valley SAC (000781) has been designated. The species that are qualifying interests are;

- Freshwater Pearl Mussel
- Sea Lamprey
- Brook Lamprey
- River Lamprey
- Twaite Shad
- Atlantic Salmon
- Otter
- Harbour Seal

6.4.3 The habitats that are qualifying interest are;

- estuaries,
- mudflats and sandflats not covered by seawater at low tide,
- water courses of plain to montane levels, old sessile oak woods
- and alluvial forests

6.4.4 The screening report describes the proposed development as infill for agriculture purposes of about 4.9ha and states that a spring on site will be piped to a water course. The site will be filled from the east to 10m of the stream which flows east west in the centre of the site and a further set back in the southwest corner where there is additional vegetation. The screening report assesses the impacts on each of the qualifying interests and finds that there are no likely impact arising from the proposed development.

6.4.5 The main channel of the Slaney River flows, generally, north-south on the opposite side of the N81. Arising from my site inspection I consider that the application site is within a valley between Eadestown Hill to the east and Saundersgrove Hill to the west. Within this valley is a substantial and fast flowing stream which runs along the western/roadside site boundary within the site. The stream enters the site in the north western corner through a culvert under the private lane running along the northern site boundary. The stream exits the site in the south western corner and flows under a small bridge on the public road. From there the stream flows west through the townland of Tuckmill lower, under the N81 and into the Slaney about

3.5kms north of Baltinglass. The submitted Screening Report states that the SAC is 600m from the application site it's probably 2.5kms by water.

- 6.4.6 The Screening Report relies heavily for its conclusions on an assertion that the set back of the filled area from the streams on site will prevent any effect on the downstream SAC. It may be noted that the additional information included a drawing S-43-3rev which includes annotations that all works would be carried out in dry weather, the site would be fenced with stock proof fencing, that last 200-300mm would be goof quality top spoil, land drains would be laid where necessary excessive compaction would be avoided and finished area would be reseeded. The drawings also provide a buffer zone 20m deep from the stream along the roadside site boundary and 10m from the east west stream.
- 6.4.7 The further information (see especially Infrastructure Design Report and attached drawing 19.033.P.01#) provides mitigation against silt laden run off through the provision of attenuation ponds between the filled area and the stream on the western site boundary. I consider that these are mitigation measures which may not be relied upon to screen out the need for submission of a NIS.
- 6.4.8 The application site is a wetland which is waterlogged at times and is bounded on the west by a fast-flowing stream which provides a hydrological connection to the SAC. At least some of the species (lampreys, twaite shad and salmon) for which the SAC has been designated are sensitive to changes in water quality. Applying the source pathway receptor model, I consider that the application has not established that the material being imported into the site and the activity of importing and filling the site would not release silt or other suspended solids (a source) into surface water (a pathway) which have the capacity to reach the SAC (receptor). I conclude, therefore that the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Slaney River Valley SAC (000781) or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

7 Recommendation

7.1 I recommend that permission be refused for the reasons and considerations set out below.

8 Reasons and Considerations

1.	<p>On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Slaney River Valley SAC (000781) or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.</p>
2.	<p>On the basis of the information provided with the application and appeal the Board is not satisfied that the proposed development does not comprise the disposal of waste which is development within Class 11(b) of Part 11 of Schedule 5 of the Planning and Development Regulations 2001, as amended. Notwithstanding that the proposed development may not reach the threshold within that Class the Board, having regard to Article 103 concludes that the application should be accompanied by an Environmental Impact Assessment Report. In the absence of such a report the Board is precluded for granting permission.</p>

3.	It is an objective of the planning authority set out in the Wicklow County Development Plan 2016 to 2022 to ensure the protection of all waters in the County, to resist development which would interfere with survival and stability of water dependent habitats and to minimise alterations to river beds, wetlands and floodplains. The proposed development would alter the natural water regime within a wetland and lead to substantial loss of natural habitat within the site. The proposed development would, therefore, materially contravene objectives set out in the County Development Plan and be contrary to the proper planning and sustainable development of the area.
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Hugh Mannion
Senior Planning Inspector

25th November 2019.