



An
Bord
Pleanála

Inspector's Report ABP-306258-19

Question

Whether the treatment of effluent underground pipeline from Liffey Meats to the Mountnuggent River is or is not development and is or is not exempted development. The said pipeline distance has a given distance of c2500m with 1000m indicated as already in situ as part of the current waste management arrangement.

Location

North Bank of Pound Stream, Kildorragh, Ballyjamesduff, Co. Cavan.

Declaration

Planning Authority

Cavan County Council.

Applicant for Declaration

Liffey Meats, Kilcully, Ballyjamesduff, County Cavan.

Planning Authority Decision

Is development Is Not Exempted Development.

Referral

Referred by

Cavan County Council.

Referral Reference by PA

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Observer(s)

None.

Date of Site Inspection

21st day of September, 2020.

Inspector

Patricia-Marie Young.

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1.0 Introduction

- 1.1. This is a referral made by Cavan County Council, under Section 5(4) of the Planning and Development Act, 2000, as amended, which is on foot of a declaration sought by Liffey Meats on the 25th day of November, 2019, on the matter of an underground treatment effluent pipeline from Liffey Meats to Mountnuggent River over a distance of a stated c2,500m with an indicated c1000m already in place as part of the current on site effluent treatment arrangements, which Liffey Meats contend is exempted development under Class 21(a) (ii) of Schedule 2 of S.I. No. 600/2001, of the Planning and Development Regulations, 2001, as amended.

2.0 Site Location and Description

- 2.1. The appeal site relates to a 2.5km stretch of the southern banks of the Pound Stream in the townland of 'Kildorragh', with the nearest point of the site being c368m to the south west of Oldcastle Road (Note: L30130) and c1.3km from the centre of Ballyjamesduff, both as the bird would fly, in rural County Cavan. The northernmost stretch of the site overlaps with the Liffey Meats plant and the site as it journeys in a south westerly direction would go through five separate landholdings. The surrounding area is characterised by its rolling and undulating landscape containing a patchwork of agricultural fields, farmsteads through to a strong proliferation of one-off dwellings. The southern bank of the Pound Stream towards the southernmost end of the site has a sylvan character.

3.0 The Question

- 3.1. The question before the Board in this case, is whether or not the following comprises of development and, if so, whether or not this development is exempted development:
- The installation of an underground effluent pipeline for a distance of c2,500m (with c1000m already in place); and all of its associated works.

4.0 Planning History

- 4.1. The Planning Authority in their submission to the Board sets out a summary of the planning history for the referrers landholding which I have read. This planning history

is extensive and goes back to c1964 and has been outlined up to 2019 when the last application for planning permission relating to their operations was made (Note: P.A. Reg. Ref. No. 19/238). Of potential relevance to this case are:

- **P.A. Ref. No. 90/18624:** Planning permission was **granted** for a development consisting of permission to extend effluent treatment plant.
- **P.A. Ref. No. 95/382:** Planning permission was **granted** for a balancing tank and alterations to existing treatment plant.
- **P.A. Ref. No. 08/981:** Planning permission was **granted** for upgrading of the effluent treatment with the installation of a digester system including the provision of a 200m² plant room containing pasteurisation unit, pumps, pipes and generator, a 1300cu.m. enclosed gas tight stainless steel digester, enclosed stainless steel storage tank, a feeding hopper, access road and all ancillary site works.

4.2. **Board Decisions Overlapping the Site**

- **ABP Ref. No. 243776:** On appeal to the Board planning permission was **granted** for development described as minor amendments to P.A. Ref. No. 11/296. The proposed amendments included: (1) re-siting of the permitted turbine to a position approximately 130 metres SSE of the approved location, (2) subsequent alterations to ancillary developments such as cable routes, access track, service track, crane hardstand and switch room location at their site in the Townland of Cloggagh, Ballyjamesduff, County Cavan. With all other aspects of the permitted development remaining unaltered.

5.0 **Policy Context**

5.1. **Local Planning Policy Provisions**

- 5.1.1. The Cavan County Development Plan, 2014 to 2020, is the applicable plan. Part of the northern end of the appeal site adjoins and overlaps land zoned 'Industry Enterprise Employment'. These lands are identified as areas developed and suitable to be developed for industrial, enterprise and employment use, including all compatible activities and operations. The majority of the site forms part of un-zoned land that falls outside of the settlement of Ballyjamesduff.

5.2. Natural Heritage Designations

5.2.1. The following European sites are within a 15km radius of the subject site:

- The site is located c4.4km to the north east of Special Areas of Protection: Lough Sheelin SPA (Site Code: 004065).
- The site is located c7.9km to the north east of Special Area of Conservation: Moneybag and Clareisland Bogs SAC (Site Code: 002340).
- The site is located c13.3km to the north east of Special Areas of Protection: Lough Kinale and Derragh SPA (Site Code: 004061).
- The site is located c14km to the north east of Special Area of Conservation: Derragh Bog (Site Code: 002201).
- The site is located is located c12.5km to the north west of Special Area of Protection: River Boyne and River Blackwater SPA (Site Code: 004232) and Special Area of Conservation: River Boyne and River Blackwater SAC (Site Code: 002299).

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer, Cavan County Council, attached a submission received by them from Liffey Meats, on the 25th day of November, 2019. It can be summarised as follows:

- A Section 5 exempted development is applied for a treated effluent pipeline connecting Liffey Meats to Mountnugent River.
- The pipeline will extend a distance of c2,500m but it is indicated that c1000m is already in place under existing arrangements.
- They contend that these works constitute exempted development under Class 21(a)(ii) of Schedule 2 of S.I. of No. 600/2001, Planning and Development Regulations, 2001.
- This submission is accompanied by an application form, a site location drawing, copy of the drawing plans and the application fee. This confirms that Liffey Meats are currently discharging at a location indicated as (A) and that they now propose

to pipe further down the Pound Stream along its northern banks for approximately 1.5km in a 9 inch pipe which they propose to bury below the surface of the ground along the streams bank to a location indicated as (B) in this accompanying documentation.

- At point (B) it is indicated that this is where Pound Stream joins the Mounthugent River and that at this location it has a much greater assimilative capacity than point (A).
- In terms of their interest in the lands affected by the proposed pipeline they indicate that they are owner of the main site area but that they would acquire rights of way along the pipeline route traversing land not in their legal interest.

7.0 Response from Owners of Land along the Pipeline Route

7.1. Based on the information contained within this file there are 5 no. 3rd Party landowners affected by the proposed route of the pipeline. They are:

- Adrian McCabe with an address of Claddagh, Castlerahan, Co. Cavan.
- David Hawthorne with an address of Derrylea, Castlerahan, Co. Cavan.
- James Reilly with an address of Kildorragh, Ballyjamesduff, Co. Cavan.
- Patrick Galligan with an address of Kildorragh, Ballyjamesduff, Co. Cavan.
- Seamus & Rose O'Reilly with an address of Carnin, Ballyjamesduff, Co. Cavan.

7.2. The Board in accordance with Section 129 of the Planning and Development Act, 2000, as amended, provided each of them with a written notification of this referral case and an opportunity to make comment.

7.3. No responses have been received by the Board.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000, (as amended).

- Section 3(1) of the Act states as follows: *“Development means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”*.

- Section 2 of the Act defines works as: *“includes any act or operation of construction, excavation, demolition, extension, alteration, repair, renewal”*. Structure is defined as *“any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined and where the context so admits, includes the land on, in or under which the structure is situate”*.
- Section 2 of the Act defines structure as meaning any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined and where the context so admits includes the land on, in or under which the structure is situated.
- Section 4 (1) (a) - (l) sets out what is exempted development for the purposes of this Act.
- Section 4(2)(a)(i) - *“the Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –*
(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or....”
- Section 4(4) states that notwithstanding paragraph (a) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment is required.

8.2. **Planning and Development Regulations, 2001, (as amended).**

- Article 6 of the Regulations.
- Article 6.3 indicates that subject to Article 9, in areas other than a city or a town or an area specified in Section 19(1)(b) of the Act or the excluded areas as defined in Section 9 of the Local Government (Reorganisation) Act 1985 development of a class specified in Column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 3 opposite the mention of that class in the said Column 2.
- Article 9 - this sets out restriction on development to which article 6 relates.

- Class 21(a) of Schedule 2 states that: *“Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking” ...*

“(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus”.

This is subject to the stated conditions and limitations:

“1. Any such development shall not materially alter the external appearance of the premises of the undertaking.

2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15metres above ground level or the height of the plant, machinery or structure replaced whichever is the greater.”

- Under Part 5(1) industrial undertaker is defined as *“a person by whom an industrial process is carried on and “industrial undertaking” shall be construed accordingly”.*
- Schedule 2 - Part 3 – Exempted Development – Rural – Minor works and structures.
- Class 3 - Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works.

9.0 **Precedent Cases**

9.1. There are no similar precedent referral cases.

10.0 **Assessment**

10.1. **Is or is not development**

10.1.1. The principle works are referred to the Board as comprising of the following:

- Installation of a treated effluent pipeline for a distance of a given distance of c2,500m, with a stated c1000m already in place, as part of the current effluent treatment arrangement and all associated works.

10.1.2. I am cognisant that Section 3(1) of the Planning and Development Act, 2000, as amended, defines development as: “*the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land*”. In addition, the term ‘works’ is defined under Section 2(1) of the said Act as: “*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*”.

10.1.3. Having regard to both definitions, I consider that the act referred to under Section 10.1.1 above which Liffey Meats intend to undertake with part already undertaken, i.e. 1000m stretch, and which is the subject of the question before the Board under this case comprises of ‘works’ within the meaning of Section 2(1) of the said Act and is therefore ‘development’ within the meaning of Section 3 of the said Act. I also note that this fact is not contested by the referrer or by the Planning Authority.

10.1.4. Therefore, the remaining two questions which need to be examined in the determination of the said question are:

- Whether the installation of a treated effluent pipeline for a distance of c2,500m with a stated c1000m already in place as part of Liffey Meats current effluent arrangements together with its associated works is exempted development or is not exempted development.

10.1.5. I propose to deal with these questions in the following sections of my report.

10.2. **Is or is not exempted development**

10.2.1. Development can be considered exempt under either Section 4 of the Planning and Development Act or under Article 6 of the Planning and Development Regulations.

10.2.2. Section 4(1) of the Act sets out the provisions in relation to exempted development and is separate to as well as has primacy over the exempted development provisions of the Regulations. However, as there are no applicable exemptions under the Act, the referral will be considered under the relevant provisions of the Planning and Development Regulations, 2001 (as amended).

10.2.3. In considering whether the development is or is not exempted development I note:

- The extent of the underground pipeline is indicated as having a distance of c2500m (with c1000m indicated as already being in place) and extends from the Referrers property in a south westerly direction with the majority of its route indicated as traversing land in five separate landowners on its route to its new discharge point.
- The pipeline is described as being required for the discharge of treated effluent from its current discharge point onto the northern banks of Pound Stream. An additional 1.5km length of pipeline consisting of a buried 9inch pipe along the Pound Streams banks running from an existing 1km pipeline which is already in place to where it would reach its new Mounnuggent River discharge point.
- The new discharge point (Point B) is indicated as having a significantly better assimilative capacity than the current discharge point into the Pound Stream (Point A). The river waterbody code for Point A is given as IE_SH_26J050300 and Point B is given as 26_13340.
- The Referrer intends to acquire rights of way along the proposed route outside of their landownership. There are five separate private landowners affected by the works and their consent for the installation of the pipework alongside the establishment of a public right of way at this point in time has not been demonstrated as being agreed and in place. Nor has it been demonstrated that the existing 1,000m has been undertaken solely on land within the Referrers legal interest and, if not, that there has been a consented too establishment of a public right of way over any other lands.
- The route of the yet to be constructed pipeline would traverse a public road at a point where there is a bridge across the Pound Stream. At this point there is a minimum of 25m in ground levels between where the pipeline commences with the landscape in between heavily undulating. This is also the case to where the pipeline would terminate at its new discharge point at the Mounnuggent River.
- There is no clarity on the extent of intervention required at this point to public and/or private lands, infrastructure, structures, boundaries or other.

- The Referrer has not provided any evidence to substantiate that they have established the required consent of public bodies with interest in any lands or structures impacted by the works proposed.
- The variable ground levels and conditions have not been clarified.
- There is significant mature planting including trees along the proposed route. The loss of natural features and/or whether any replacement landscaping works are proposed to offset such loss is unclear.

10.2.4. Under Article 6 (3) of the Planning and Development Regulations, 2001, as amend (and subject to Article 9) development of a class specified in Column 1 of Part 1 of Schedule 2; and in Column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part.

10.2.5. Liffey Meats contend that their development benefits from the exempted development provisions set out under Class 21(a)(ii) of Schedule 2 of the Planning and Development Regulations, 2001, as amended. This contention is set out in in their Section V submission to the Planning Authority.

10.2.6. I am cognisant that Class 21 relates to development for industrial purposes and subsections (a) (ii) states: *“development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of industrial undertaking”...“(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus”.*

10.2.7. I accept that Liffey Meats, meets the definition set out under Part 5(1) of the Planning and Development Regulations, 2001, as amended, in that they carry out and undertake industrial processes at their subject lands in the Townland of Kilcully, Ballyjamesduff, Co. Cavan.

10.2.8. However, having regard to Class 21(a)(ii) as set out above I note that this exempts development carried out by an industrial undertaker on lands that they occupy and that are used by them for the carrying on, and for the purposes of their industrial process. With this including the provision, rearrangement, replacement and/or maintenance of pipes, which arguably this development comprises of.

- 10.2.9. Notwithstanding, the main extent of the works relate to land on which this particular industrial undertaker does not carry out any industrial undertaking or processes on. More crucially the main extent of the pipeline is on lands, which appear to be predominantly established agricultural land use outside of this industrial undertaker's legal interest. There is nothing provided with this file or indeed by way of submissions received by the Board that would substantiate this industrial undertaker has obtained consent from the landowners impacted by the works proposed or that these landowners are open to the creation of public rights of way going forward for maintenance and the like of the pipeline.
- 10.2.10. It is also unclear if the pipeline would traverse lands that may be subject to any public rights of way.
- 10.2.11. Furthermore, it would appear from the information provided that the pipeline may also traverse public lands. In particular lands associated with a public road/bridge. If this is indeed the case, no consent has been provided from the Roads Authority for any interference and/or works to be carried out on these lands.
- 10.2.12. I therefore consider that the provisions of Class 21(a)(ii) in my view can not be deemed to be applicable in this situation where lands are outside of the industrial undertakers landholding from which they carry on and/or undertake their industrial processes from.
- 10.2.13. Of additional concern, Section 4(4) of the Planning and Development Act, 2000, as amended, provides that development shall not be exempted development if an appropriate assessment is required.
- 10.2.14. In this instance, works are proposed to be undertaken and have been undertaken along the banks of the Pound Stream with a new discharge point for treated effluent to be provided at the point where the Pound Stream joins the Mountnugent River. The length of the buried 9-inch pipe would run a total stated 2.5km to the new discharge point with Mountnugent River flowing into Lough Sheelin which lies c4.4km downstream to the south west of the site. At this point it is contended that there is a much greater assimilative capacity than at its existing discharge point into the Pound Stream.

- 10.2.15. Lough Sheelin is afforded specific protection by way of its designation as an SPA (Note: Special Areas of Protection: Lough Sheelin SPA (Site Code: 004065)) under the EU Birds Directive EC/79/409.
- 10.2.16. It is a freshwater lough that is populated by a depleted population of Brown Trout and it is an important site for wintering waterfowl supporting nationally important populations of great crested grebe, pochard, tufted duck and golden eye. This lack has suffered significant deterioration from enrichment mostly notably by increased levels of phosphorous originating upstream by intensive agriculture and the like.
- 10.2.17. The documentation submitted with this application does not include an Appropriate Assessment Screening Report to clarify whether or not adverse impacts may arise on Natura 2000 sites or otherwise. There is little information available together with little detail given on the methodology for the laying of the pipeline along the bank of the Pound Stream to where the new discharge location is proposed where the Pound Stream meets Mountnugent River. There are also no details as to what measures would be adopted to protect water quality through to the ecological corridor that exists along its route and whether or not any improvements over and above the existing situation would occur.
- 10.2.18. Given the significant length of the proposed pipeline; the limited overview of the works proposed in terms of the level of ground disturbance along watercourse bank; the lack of any detail given to the changing levels along the route; the lack of any details to the extent in which any natural features through man-made features would be impacted; through to the lack of detail given on any associated fill to be placed around the proposed 9-inch pipework and measures to be taken to ensure no adverse impact occurs to the water status of the Pound Stream and Mountnugent River during the course of works to be undertaken and those that have been undertaken to date I consider that there is a risk that construction works associated with the pipeline could have a deleterious effect on water quality of Pound Stream, the Mountnugent River and in turn the water quality of the Lough Sheelin SPA, a Natura 2000 site.
- 10.2.19. I also consider, that even though it is indicated that there is a much greater assimilative capacity at the new discharge point proposed and that this could improve water quality along the Pound Stream this has not been demonstrated by the information provided.

- 10.2.20. No information has been provided on the volume of discharge that would be catered for by this pipeline; the level of treatment that has occurred prior to discharge at Point B; a breakdown of the discharges components through to whether or not this discharge can be assimilated at the new discharge point without any adverse and/or adverse cumulative impacts arising on the water quality, biodiversity and ecology of the Mountnugent River and similarly further downstream at the Lough Sheelin SPA.
- 10.2.21. Due to the significant lateral distance between the proposed route of the works to where the new discharge point is proposed I consider that any adverse effect on water quality would probably be dispersed and diluted to a negligible level by the time the Mountnugent River meets the Lough Sheelin SPA but this is conjecture in the absence of more robust information and the precautionary approach in terms of impact should be applied.
- 10.2.22. The main potential for adverse impact, albeit likely to be of temporary duration, would occur during the associated construction works, and it is unclear what, if any mitigation measures, would be taken to ensure that no adverse impact does arise during this phase of the development.
- 10.2.23. Another potential for adverse impact that could arise is from any breaches of the integrity of the pipeline and in terms of the quality of treated effluent should some fault or issue occur upstream.
- 10.2.24. In such circumstances adverse environmental through to ecological impacts could occur.
- 10.2.25. In relation to Appropriate Assessment screening this requires the assessment of likelihood effects in the absence of mitigation measures. As a consequence, I consider that the risk of environmental effects on a European Site, would have triggered the need for appropriate assessment screening as a precautionary measure, given that the Mountnugent River discharges into Lough Sheelin SPA. For this reason, I consider that the carrying out of the installation works associated with the provision of the pipeline on the banks of the Pound Stream and to where the discharge point is proposed where the Pound Stream meets Mountnugent River irrespective of the fact that this pipeline would be carrying treated waste water would not be exempted development by virtue of it requiring such an assessment.
- 10.2.26. **Conclusion on Exempted Development**

Having regard to the above, I am satisfied that the treatment effluent underground pipeline from Liffey Meats to the Mountnuggent River **is development and is not exempted development** at north bank of Pound Stream, Kildorragh, Ballyjamesduff, Co. Cavan.

11.0 Recommendation

11.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the installation of a wastewater treatment effluent underground pipeline from Liffey Meats to the Mount Nugent River is or is not development or is or is not exempted development:

AND WHEREAS Cavan County Council has requested a declaration on this question from the Board on the 20th day of December, 2020:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(4) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1), and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 21(a) (ii), Part 1, Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) The submissions on file,
- (g) The planning history of the site,
- (g) The ownership of the lands which include lands outside of the Referrers ownership and the lack of consent for these lands which are also not in use by the Referrer as part of their Industrial Undertaking and/or processes,
- (h) The undulating nature of the landscape setting along the route of the pipeline,

(i) The potential for adverse environmental and ecological issues to arise alongside the potential in such event for adverse impact on a Natura 2000 site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The installation and construction of wastewater treatment effluent underground pipeline from Liffey Meats along the bank of the Pound Stream to the Mount Nugent River constitutes works that come within the scope of Section 2(1) of the Planning and Development Act, 2000,
- (b) The said works constitute development that comes within the scope of Section 3(1) of the said Act,
- (c) A significant portion of the pipeline relates to lands that are not occupied and/or used by the industrial undertaker for any of their industrial undertakings and as a consequence they do not come within the scope of the exemption provided under Article 6(1) and Part 1 and Part 3 of Schedule 2 of the said Regulations,
- (d) It has not been demonstrated clearly and unambiguously that the works do not require appropriate assessment. Therefore, based on the precautionary approach and with regard to Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, the works are subject to the requirements of Section 4(4) of the Planning and Development Act, 2000 (as amended).

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the installation of an underground effluent pipeline for a distance of c2,500m (with c1000m already in place) and, all of its associated works is development and is not exempted development.

Patricia-Marie Young
Planning Inspector – 5th day of October, 2020.