



An
Bord
Pleanála

Inspector's Report

ABP-307018-20

Development	Upgrade of wastewater treatment plant to capacity of 900PE
Location	Ballyroan, Co.Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	19/328
Applicant	Irish Water
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party v Condition No. 7
Appellant	Irish Water
Observer(s)	None
Date of Site Inspection	30.06.2020
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The main body of the site is located at the end of an approx. 150 metres long private access laneway off a local road (Bog Road) approx. 600 metres north west of Ballyroan village in central Co. Laois.
- 1.2. The existing treatment works is located in a backland site. There is a single storey house adjacent to the east of the junction of the access laneway and Bog Road. The local road is straight at this location. The Gloreen Stream runs along the southern boundary of the site and there is a palisade fence around the main area of the site. There are some trees around the main body of the site and along the access laneway. There is a small control building adjacent to the entrance within the main body of the site. Land use in the immediate vicinity is primarily agricultural.
- 1.3. The site has a stated area of 0.37 hectares.

2.0 Proposed Development

- 2.1. The application is for permission to upgrade the existing wastewater treatment plant to a capacity of 900PE incorporating different types of tanks, flow splitting chambers, pumps, air blowers, pipework and ducting, welfare facilities and internal access road extensions.
- 2.2. The existing control building has a stated floor area of 18sqm and a height of approx. 5.5 metres. The proposed welfare building has a stated floor area of 24sqm and an indicated height of 2.525 metres. It appears to be a steel container structure.
- 2.3. In addition to standard planning application plans and particulars the application was accompanied by a 'Planning Report' which included as appendices an 'Appropriate Assessment Screening Report', a 'Natura Impact Statement', an 'Environmental Impact Assessment Screening Report' and a 'Flood Risk Assessment'.
- 2.4. Further information was submitted in relation to, inter alia, a revised Natura Impact Statement and revised Flood Risk Assessment. Detail of how sightlines will be achieved was also submitted. The planning authority considered the further

information response to comprise significant further information and the application was re-advertised.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 15 no. conditions including surface water disposal, vehicular entrance detail, lighting, landscaping, construction practices, mitigation measures outlined in the submitted Natura Impact Statement, archaeological monitoring and development contributions. Of particular relevance is Condition 7 which states as follows.

7. (a) The entrance to the site shall be recessed 4.3m behind the new fence line with wing walls not more than 1.2m in height splayed at an angle of 45 degrees.

(b) Adequate sight distances of 3 metres x 90 metres shall be created and maintained in both directions at the site entrance. The sight distances shall be measured from a point 3 metres in from the road edge and from a drivers eye height of 1.05 metres to an object height of 1.15 metres 90 metres away.

(c) All areas forward of the sight splays, excepting access way, shall be grassed up to the metalled edge of the road. No wall, excepting the wing walls for the access, shall be erected as part of the boundary, whether or not such development would constitute 'exempted development' under the terms of the Planning and Development Regulations, 2001 as amended.

(d) Any damage caused to the adjoining public thoroughfare shall be made good at the developer's expense to the satisfaction of the Planning Authority.

(e) The required sight distances shall be in place to the satisfaction of the Planning Authority and Road Authority prior to commencement of any construction works or site preparatory works authorised by this grant of permission.

Reason: To ensure the provision of an adequate entrance to the development in the interests of traffic safety.

3.2. **Planning Authority Reports**

3.2.1. Two Planning Reports are the basis of the planning authority decision. The second report considers that, having regard to its nature, extent and location the proposed development would comply with the provisions of the Laois County Development Plan 2017-2023 and the proper planning and sustainable development of the area.

3.2.2. **Other Technical Reports**

Area Office – No objection.

Road Design – No objection following the submission of the further information response.

Fire Officer – No objection subject to a condition.

3.3. **Prescribed Bodies**

Dept. of Culture, Heritage and the Gaeltacht – No objection subject to a condition relating to archaeological monitoring.

Inland Fisheries Ireland – No objection following the submission of the further information response.

3.4. **Third Party Observations**

3.4.1. None received either with the initial planning application or on foot of the re-advertised public notices.

4.0 **Planning History**

4.1.1. None.

5.0 Policy Context

5.1. Project Ireland 2040 National Planning Framework

- 5.1.1. National Policy Objective 18b states it is an objective to develop a programme for ‘new homes in small towns and villages’ with local authorities, public infrastructure agencies such as Irish Water and local communities to provide serviced sites with appropriate infrastructure to attract people to build their own homes and live in small towns and villages.
- 5.1.2. National Strategic Outcome 9 states that investment in water services infrastructure is critical to the implementation of the National Development Plan.

5.2. Laois County Development Plan 2017-2023

- 5.2.1. Section 6.2 (Infrastructure – Water Supply and Wastewater Services) is the most relevant section. Policy WS1 states it is policy to facilitate the delivery of Irish Water’s Investment Plans and ensure that all lands zoned for development are serviced by adequate water services. Policy WS12 states, inter alia, that it is policy to work with Irish Water to upgrade public wastewater systems in villages to serve existing and future populations. Policy WS13 states, inter alia, that it is policy to promote the development of additional treatment capacity at existing plants where required.

5.3. Natural Heritage Designations

- 5.3.1. The closest Natura 2000 site is River Barrow and River Nore SAC approx. 5.1km to the west. However, hydrologically, the closest point of the SAC is approx. 9.2km to the south west by way of the Gloreen Stream. The River Nore SPA is also located in this area.

5.4. EIA Screening

- 5.4.1. An ‘Environmental Impact Assessment Screening Report’ was submitted with the application. The proposed development involves upgrading an existing wastewater treatment plant with a PE of 600 (the figure is elsewhere provided as 650 PE) to a plant with a PE of 900. Schedule 5 of the Planning & Development Regulations, 2001

(as amended) relates to development for the purposes of EIA. After assessing the proposed development in the context of applicable classes set out in Schedule 5 (Parts 1 and 2) of the Planning & Development Regulations, 2001 (as amended), Part 2 Class 11(c) was considered most relevant i.e. waste water treatment plants with a capacity greater than 10,000PE. The proposed development does not exceed any threshold where EIA is mandatory.

- 5.4.2. Schedule 7 of the Regulations sets out criteria for determining whether development listed in Part 2 of Schedule 5 should be subject to EIA such as the characteristics and location of the proposed development and types and characteristics of potential impacts. Schedule 7A sets out information to be provided for the purpose of the screening such as a description of the development, a description of the aspects of the environment likely to be significantly affected and a description of any likely significant effects. The proposed development is considered against these criteria in Table 5.1 of the submitted document. On foot of these considerations the report concludes that the proposed upgrading works are unlikely to result in significant effects giving due consideration to appropriate mitigation measures (also included in Table 5.1). It also notes an improvement will occur to the existing water quality.
- 5.4.3. Having regard to the content of the submitted Screening Report, the nature and scale of the proposed development and the nature of the receiving environment, I am satisfied that an environmental impact assessment is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The main points raised can be summarised as follows:

- The grant of permission is welcome but there are specific concerns relating to Condition No. 7. The applicant wishes the Board to assess the appeal under section 139(1) of the Planning & Development Act (as amended) and remove the condition.

- Condition 7 requires provision of a new access arrangement. A new access arrangement was not sought as part of the planning application. Implementation of Condition 7 would necessitate the applicant acquiring additional land of an approx. 1 metre strip to the east and an approx. 2.5 metres strip to the west. The applicant cannot comply with the condition as it involves development on land outside their control. The applicant is seriously concerned that land may have to be CPO'd unnecessarily with the associated cost implications.
- Further information was sought on three issues relating to sightlines. The site is currently visited by car once a day and a tanker once a week. These movements will not increase once the development is operational. The applicant considers sightlines to the west can be achieved by cutting back hedges. Engagement with the Road Design Section prior to submitting the further information response indicated this was acceptable. Hedge trimming to the west has already been carried out and will be maintained by operations staff on an ongoing basis.
- The planning file indicates these issues had been requested by the Road Design Section. The applicant engaged with Road Design in relation to the response to the further information request. The Road Design Section email to the Planning Department stated it was satisfied with the information provided and had no further objection. Notwithstanding, Condition 7 was applied. There is no indication in the assessment section of the Planners Report that the further information response was unsatisfactory or why the condition was considered necessary. In light of the Road Section response and the assessment of the Planners Report it may have been applied in error.
- The applicant considers sufficient sightlines can be achieved through the submitted proposals.

6.2. Planning Authority Response

6.2.1. None.

6.3. Observations

6.3.1. None.

7.0 **Assessment**

This is a first party appeal only against Condition No. 7 of the planning authority's grant of permission. Condition No. 7 relates to the requirement for a new entrance layout to the existing wastewater treatment plant which it is proposed to upgrade. Having regard to the overall nature of the proposed development, having examined the application details and all other documentation on file and having inspected the site, I consider it reasonable to briefly consider the principle of the development and the appropriate assessment issue prior to considering whether Condition No. 7 can be considered on its own in accordance with section 139(1) of the Planning & Development Act, 2000 (as amended).

7.1. **Principle of Development**

- 7.1.1. The site is located outside the village of Ballyroan. The existing wastewater treatment plant was constructed in 2003 and treated effluent was discharged to the Gloreen Stream. The proposed development intends to upgrade the plant to a design capacity of 900 PE and to meet the EPA's Emission Limit Values as set out in the Waste Water Discharge Licence. The existing wastewater treatment plant is not capable of handling the existing biological load or the hydraulic load. New wastewater treatment process units will be constructed within the existing plant. The upgrade will cater for current loads as well as providing for population growth and will also improve the quality of wastewater discharge to the Gloreen Stream where there is an observable negative impact on the quality of the receiving water.
- 7.1.2. Potential noise pollution is addressed by the installation of acoustic enclosures on equipment such as air blowers which tend to be the noisiest equipment. There are no EPA designated guideline odour emission criteria for wastewater treatment plants. Notwithstanding, an odour control limit of five odour units per cubic metre, to be achieved on a 98-percentile basis, has been applied at the site boundary as suggested by some studies. Overall, no noise or odour nuisance is expected. The 'Flood Risk

Assessment' submitted with the application concludes that some mitigation will be included for potential fluvial flooding which will not increase flood risk elsewhere.

- 7.1.3. I consider the proposed development, at an existing facility, would comply with general local and national policies to improve water services infrastructure, encourage development of existing villages as well as improving the quality of discharge to the adjacent watercourse. Therefore, I consider the principle of the development to be acceptable.

7.2. Appropriate Assessment

- 7.2.1. An 'Appropriate Assessment Screening Report' and 'Natura Impact Statement' were submitted with the planning application.
- 7.2.2. The receiving water for the treatment plant is the Gloreen Stream where treated effluent was discharged by gravity. The existing treatment units are not capable of handling the existing hydraulic load and have been regularly flushed out. The Screening Report states that tankering of all effluent from the site has been occurring since July 2018 due to a notice issued by the EPA as a result of the low levels of the river during the summer. The notice has continued due to the plant not being able to meet its exposure limit values (ELVs). In order to achieve the specified ELVs a new treatment process is required.
- 7.2.3. The Gloreen Stream is a tributary of the River Nore which is designated as the River Barrow and River Nore SAC approx. 9.2km downstream of the site and which is one of two likely affected Natura 2000 sites (the other being the River Nore SPA approx. an additional 150 metres further downstream). The Nore Upper Water Management Plan identifies the Ballyroan plant as a pressure point on the Nore Upper Catchment. The SAC has been designated partially on the basis of the freshwater pearl mussel. Five treatment plants within the Nore catchment, including Ballyroan, were deemed to have a significant adverse effect on the pearl mussel and the NPWS considers it essential to reduce sediment, nutrient and organic loads to the Nore upstream of the freshwater pearl mussel population. A Waste Assimilative Capacity Assessment was carried out which shows that there is sufficient assimilative capacity in the stream at the discharge location. Though the Gloreen Stream indicates unsatisfactory water quality downstream of the treatment plant the River Nore appears to have sufficient

dilution capacity to assimilate the stream without a drop in water quality. However, given the poor state of discharge at Ballyroan the risk of negative impacts to water quality in the SAC cannot be ruled out. The key issue in terms of impact on the Natura 2000 sites is the likelihood of effects from a reduction in water quality within the receiving waterbody. The Screening Report considers that there is potential for direct and in-combination impacts on qualifying interests and supporting habitats via water quality. Impacts could occur during both the construction and operation phases of development, but it is also noted that a positive impact may occur by reducing the negative impact of the existing discharge from the wastewater treatment plant. Notwithstanding, potential impacts may arise during the construction and operational phases and it cannot be excluded that the development, individually or in-combination will have a significant effect on the SAC or SPA.

7.2.4. On foot of the conclusion of the Screening Report a detailed 'Natura Impact Statement' was prepared. Potential indirect impacts are set out e.g. sedimentation, accidental leakage, invasive species as a result of construction activity. In lieu of any mitigation, potential for adverse impacts on seven species were identified (the freshwater pearl mussel, Nore pearl mussel, crayfish, sea, brook and river lampreys and salmon). Therefore, the main source of threat is to the quality of the aquatic environment. A number of protective mitigation measures are set out, the aim of which is to reduce and avoid adverse effects on the European sites. The NIS concludes that, following application of the mitigation measures, potential adverse effects will be avoided and there will be no risk of adverse effects on the SAC.

7.2.5. Having regard to the relevant documentation submitted with the planning application and as revised as part of the further information response, I am satisfied that no appropriate assessment issues arise. 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. I also note that Condition 12(b) of the planning authority decision requires the mitigation measures outlined in the NIS to be implemented in full.

7.3. Condition 7 of the Planning Authority Decision

- 7.3.1. I consider that the principle of the overall development is acceptable and that no appropriate assessment issues arise. I also note that no submissions or observations were received on file. Having regard to the nature of Condition No. 7 of the planning authority decision, I consider that a de novo determination by the Board of the application is not warranted. Therefore, I consider the Board can restrict its deliberations to the matter raised in the appeal only, in accordance with Section 139 of the Planning and Development Act, 2000 (as amended).
- 7.3.2. On foot of the initial planning application the planning authority's Roads Section recommended further information requesting the applicant show achievable sightlines at the entrance location as, from a site inspection, it was apparent that a 90 metres sightline distance to the west was not available as was indicated on Drawing No. 10557-2001 (Existing Site Layout Plan – Sheet 1 of 2). Maintenance planned to maintain sightlines and detail of any maintenance agreement required with local landowner(s) was also sought. The Area Office report indicated no concern with sightlines. The Planning Report noted the concern regarding the availability of the sightline notwithstanding that this is an existing, established entrance. Items 12, 13 and 14 of the further information request related to the sightline issue.
- 7.3.3. In response it was proposed to cut back the existing hedge to the west of the entrance to achieve sightlines. The response stated this had been discussed with the Roads Section. The removal or realignment of the roadside boundary is not required once the hedge is cut back. Though the submitted layout showed the hedgerow to be outside the ownership of the applicant no letter(s) of agreement in relation to this from the relevant landowner(s) was submitted. The updated Roads Section report indicated satisfaction with the information provided and that there was no further objection. Other than repeating the further information response the updated Planning Report does not make any further reference to the sightline issue. Condition No. 7 was recommended and was included in the decision to grant. The planning authority has not made any response to the grounds of appeal.
- 7.3.4. Section 5.4 of the 'Planning Report' submitted with the application stated that the existing access to the wastewater treatment plant will be retained. No part of the application made any reference to a revised or upgraded vehicular entrance layout.

The existing vehicular entrance is an established entrance. It is located on a straight stretch of the local road though sightlines are restricted in a westerly direction. There are two gates to the site; one set back from the entrance at the public road and the second at the entrance to the main body of the site. It is stated in the grounds of appeal that the site is visited by a car once a day and by a tanker once a week and these movements will not increase once the development is operational. It appears, from the documentation submitted with the application, that the tanker currently visits the site in order to remove all effluent. It is unclear why a weekly tanker visit would continue to be required if the plant is upgraded.

- 7.3.5. The main issue is the sightline to the west which is, unquestionably, constrained. The Council's Roads and Parking Standards (2007) document is referred to in Section 8.5 (Development Management Standards) of the County Development Plan 2017-2023. This document gives a 90 metres sightline distance for a local secondary road (the road is cited as a local secondary road in the planning authority's Planning Report). I note that this distance is a 'desired minimum'. In addition, the document states that in certain cases relaxations in relation to sight distances will be considered subject to the approval of the Senior Executive Engineer. This is the grade of the engineer who signed the further information request and who the applicant stated they spoke to prior to submission of the further information response on foot of which the Road Design Section stated they were satisfied with the response.
- 7.3.6. There is no indication in the planning authority's Planning Report why Condition 7 was included. It appears to be a condition that would be attached to new developments and new access points as opposed to an existing access point where no intensification of use will occur once operational. The Road Design Section indicated satisfaction with the further information response which, in the event Condition No. 7 is omitted, is accommodated within Condition No. 1 of the planning authority decision.
- 7.3.7. In conclusion, I consider, having regard to the specific circumstances of the proposed development i.e. where no intensification of use to an existing and established entrance will occur, that the attachment of Condition No. 7 is not reasonable in this context.

8.0 Recommendation

- 8.1. I recommend to the Board that the planning authority be directed to omit Condition No. 7 for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, which relates to the upgrading of the existing wastewater treatment plant accessed by way of an existing and established vehicular entrance, where the vehicular entrance did not form part of the planning application and where no intensification of use of the entrance will occur, it is considered that the modifications and alterations required by Condition No. 7 of the planning authority decision is not justified or warranted in this instance.

Anthony Kelly

Planning Inspector

15.07.2020