



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307353-20 Addendum

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**Development**

Waste and recycling facility.

**Location**

Labbadish, Manorcunningham, Co.  
Donegal

**Planning Authority**

Donegal County Council

**Applicant(s)**

John Caulderbanks

**Type of Application**

Substitute Consent

**Observer(s)**

Jim Ferry

**Date of Site Inspection**

18<sup>th</sup> October 2023

**Inspector**

Hugh D. Morrison

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## 1.0 Introduction

1.1. The Board considered this case on 19<sup>th</sup> December 2023. It decided to defer making a decision pending the applicant's response to a Section 132 notice, which requested the following information:

- (i) *The Board noted the OPW's flood maps show the site as being the subject of an indicative fluvial flood risk under medium and low probability scenarios, i.e., 1 in 100 and 1 in 1000 flood risk events. Section 5.4 of Donegal County Development Plan 2018 – 2024 aims to manage development proposals within flood risk areas in a sequential manner based on avoidance, substitution, justification and mitigation and to otherwise ensure that flood risks can be managed to an acceptable level without increasing flood risk elsewhere. In this regard, the Board might consider insufficient information as to whether the development is in compliance with Policies F-P-1 – 4 and Objective F-0-1 of the Development Plan. You are therefore invited to provide any document, particulars or other information in relation to the considerations outlined above as they relate to this application.*
- (ii) *The Board noted limited information concerning the WWTS and percolation area with respect to EPA guidelines. The Board further noted that the WWTS may not have been included in the scope of the NIS. In this regard, the Board might consider insufficient information as to whether the development is in compliance with Policy WES-P-4, 8 & 11 regarding water protection as well as Objective NH-0-2 regarding natural heritage in the Development Plan. You are therefore invited to provide any document, particulars or other information in relation to the considerations outlined above as they relate to this application.*

1.2. The applicant responded to the above requests, and the Board decided to issue a Section 131 notice to the PA, observer, and consultees. Responses from the PA and observer were subsequently received.

1.3. The Board has requested this addendum report. I will summarise the information received from the applicant, PA, and observer, and I will comment upon the same.

## 2.0 Summaries

### Applicant

2.1. The applicant has responded to the first of the Board's requests by submitting the following information:

- The applicant begins by recognising that the locality of the site faces a flood risk from the Corkey River, which passes through it. He then outlines a workshop event that stakeholders in this locality, including operators of critical infrastructure, took part in in order to scenario gaze what might be likely to happen under a 1 in 1000-year storm event.
- The applicant reports that, given his site's height above both sea level and the Corkey River, it would not be affected by flooding under such a storm event, although other properties in the vicinity would be. In order to provide flood relief, the applicant agreed to purchase land adjoining his site to the north "with a view to creating a man-made flood plain" for these properties and his own site "going into the future".

2.2. The applicant has responded to the second of the Board's requests by submitting the following information:

- The existing septic tank has a capacity of 3500 litres, which is sufficient for a PE of 5 employees plus visitors. It was installed in accordance with the Urban Waste Water Treatment Regulations 1994 and the EPA's Code of Practice for Small Communities and Businesses. This septic tank has handled loadings from the site adequately over many years.
- The accompanying percolation area was installed in accordance with the aforementioned Regulations and Code of Practice, too, and it is designed to handle a PE of 5. Its siting meets relevant separation distances.
- Both the septic tank and the percolation area have been inspected in the past 8 years. The septic tank was reported as being fully intact, and an upgrade of the percolation area was undertaken. When originally installed, 72m of linear percolation piping was laid out. For a PE of 5, 90m of such piping is now required, and so 2 no. lengths of 10m piping were added. No ponding or pollution has been recorded over the last 8 years. If such were to arise, then a replacement WWTS and percolation area would be installed.

- The applicant confirms that the septic tank and percolation area are consistent with the Policies and the Objective cited by the Board.

### **Planning Authority**

- 2.3. The PA has submitted an extract of the most recent flood map of the site, which takes account of likely climate change. This map shows about 40% of the site as lying within either Flood Zone A or B. It also shows the remaining 60% of the site as lying within Flood Zone C.
- 2.4. The subject use of the site is classified as a “less vulnerable use”, and so the potential exists for the Justification Test. However, temporary planning permission for this use has existed since 2004, and so the PA considers that substitute consent should now be granted. Furthermore, the use would be consistent with Policies F-P-1 – 4, and the PA recognises that adjoining land to the north of the site functions as a flood plain.

### **Observer**

- 2.5. The observer’s initial response critiques the applicant’s submission on the basis that it lacks the input of suitably qualified experts. The observer also states that the area of the site lies within a flood plain, which he has witnessed flooded, and “most of the fields are waterlogged all winter”.
- 2.6. The observer’s subsequent response critiques the PA’s contention that the use complies with Policies F-P-1 – 4 without explaining why. The observer also contends that there are solid reasons for refusing the substitute consent insofar as the subject use has been unauthorised since 2014. Enforcement proceedings against the use are continuing in the circuit court, and the view is expressed that to grant substitute consent would run contrary to the Board’s decision in the case of ABP-304086-19. The observer attaches copies of media reports of flooding in the area of the site.

## **3.0 Commentary**

- 3.1. Under my original report, I commented upon the flood risk attendant upon the site and the applicant’s septic tank and percolation area in Paragraphs 7.32 & 7.33 and Paragraph 7.29, respectively.

- 3.2. The applicant's response to the Board's first request for further information addresses the question of flood risk. He explains that he was involved in a workshop during which scenario gazing as to the effects of a 1 in 1000-year storm event were explored. Thus, while other properties in the surrounding area were flooded by the Corkey River, his site was unaffected, due to its elevated position. Nevertheless, the applicant agreed to acquire the adjoining lower lying land to the north of his site, which would serve as a man-made flood plain for the area.
- 3.3. The PA recognises the role of the adjoining land as a flood plain. In doing so it confirms my own observation and provisional judgement that this land may have contributed to the site remaining unflooded in the past. The observer dissents, although he does not state that he has witnessed flooding of the site, as distinct from fields within its vicinity, which may bear out the efficacy of the adjoining land to the north as a flood plain. He refers to media reports of flooding. However, these do not relate to the locality of the site, i.e., Labbadish. He also refers to enforcement proceedings against the applicant, and he cites a Board decision in support of his position that substitute consent should not be granted in circumstances entailing such proceedings. However, the decision in question related to an application for leave to apply for substitute consent, whereas in the current case such leave has previously been granted and the current application is the corollary of the same.
- 3.4. In my original report, I discuss under the second and third headings of my planning assessment the planning history of the site and the land uses to which it has been subject over the years. The use, which is the subject of the current application, has received temporary planning permission on foot of effectively a retrospective change of use application 04/6015 and an extension application 08/40101. The current application is for substitute consent for the use since its temporary permission lapsed only. As such the provisions of Paragraph 5.28 of the Planning System and Flood Risk Management Guidelines are of relevance. This Paragraph states that "most changes of use of existing buildings and or extensions and additions to existing commercial and industrial enterprises, are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances." Under the current application, the use would fulfil these pre-conditions, and so the need for the sequential approach and Justification Test does not arise.

- 3.5. The applicant's response to the Board's second request for further information elaborates upon notation to the effect that the septic tank and percolation area have worked well over the last 20 years without giving rise to pollution. His response now indicates that these items were inspected 8 years ago with the former being found to be intact and the latter in need of extension, which was duly undertaken to ensure its ability to service a PE of 5. He also reiterates that pollution has not arisen in the intervening period of time.
- 3.6. The applicant has not augmented his rNIS to include within its scope the septic tank and percolation area. Presumably, he saw no need to do so, based on his position that the septic tank and percolation area have not given rise to pollution. In the absence of any evidence to the contrary concerning pollution, I consider that the inclusion of the septic tank and percolation area in my appropriate assessment would not change its conclusion as stated in Paragraphs 8.29 – 8.31 of my original report.
- 3.7. In the light of my commentary, my recommendation on the current application remains as previously advised in my original report.

*I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.*

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Hugh D. Morrison  
Planning Inspector

3<sup>rd</sup> May 2024