



An
Bord
Pleanála

Inspector's Report ABP-307492-20

Development	Importation of soil and stone to raise agricultural field and construction of a temporary entrance
Location	Gearagh, Rossmore, Clonakilty, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/743
Applicant(s)	David Wilson
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Dan O'Leary Jacinta and Jason Collins
Date of Site Inspection	14 th October, 2020
Inspector	Kevin Moore

1.0 Site Location and Description

- 1.1. The 1.57 hectare site is located in a rural area approximately 7km north-west of Clonakilty in County Cork. It comprises agricultural grassland bounded to the north and west by forestry, to the east by further agricultural land and to the south by a local road. The land gently slopes northwards, is lowlying with rough vegetation and has rock on the surface throughout. The Argideen River is located approximately 250m south of the proposed site. There are drains along the eastern and western boundaries of the site where water flows in the direction of the Ihernagh River to the north, which itself discharges into the Argideen River some 2km downstream. The Argideen River discharges into Courtmacsherry Bay some 13km distant. The bay is the site of Courtmacsherry Estuary SAC and Courtmacsherry Bay SPA.

2.0 Proposed Development

- 2.1. The proposed development would comprise the importation of soil and stone for the raising of an agricultural field in order to improve the agricultural output of the field and the construction of a new temporary entrance. The timeframe for filling is anticipated to be five years, using 30,413m³ of soil and stone. It is proposed that no more than 25,000 tonnes would be imported in any given year. Average fill depth would be 2m and would range from 0.01m to a maximum of 2.6m. A 5m buffer would be provided along the perimeter of the site and bunding would be included. Site boundary vegetation would be retained.
- 2.2. Details submitted with the application included an Appropriate Assessment Screening, a Natura Impact Statement, and an agricultural report.

3.0 Planning Authority Decision

3.1. Decision

On 9th June 2020, Cork County Council decided to grant permission for the proposed development subject to 12 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted development plan provisions, planning history, third party submissions, and reports received. A request for further information was recommended relating to a screening for EIA and an archaeological impact assessment. The report from the Heritage Unit relating to a previous application for filling of the lands was attached to the report and the conclusions are noted.

3.2.2. Other Technical Reports

The Area Engineer had no objection to the proposal and attached a schedule of conditions.

The Archaeologist requested an Archaeological Impact Assessment of the site.

The Environment Section noted a Waste Facility Permit would be required if permission is granted. There was no objection to the proposal subject to the attachment of one condition.

3.3. Prescribed Bodies

Inland Fisheries Ireland sought the attachment of planning conditions in the event permission is granted.

3.4. Third Party Observations

Objections to the proposal were received from Jacinta Collins, Jason Collins and others, Brian and Orla Harrington, and Dan O'Leary. The grounds of the appeal reflect the principal concerns raised.

3.5. On 22nd January 2020, a request for further information was sought and a response to this request was received by the planning authority on 19th February 2020. It was confirmed that the tonnage to be accepted per annum would be less than 25,000 tonnes. The details submitted included an Archaeological Impact Assessment, an EIA Screening, and a Natura Impact Statement.

3.6. Following receipt of this information, further third party submissions were received from Dan O’Leary and Orla and Brian Harrington. The applicant responded with unsolicited information to these submissions.

3.7. The additional reports to the planning authority were as follows:

A report from ‘Sharon Casey’ recommended the attachment of a condition requesting a scaled habitat map identifying all drains, the woodland and its associated tree dripline to the north of the site for agreement with the planning authority.

The Environment Section had no objection to the granting of permission.

The Planner noted the further information response. It was stated that the County Archaeologist is satisfied with the applicant’s archaeological report and concurs with the assessment. A grant of permission was recommended subject to conditions.

4.0 **Planning History**

P.A. Ref 19/490

An application for the importation of soil and stone for the raising of an agricultural field in order to improve the agricultural output of the field and the construction of a new temporary entrance was withdrawn.

5.0 **Policy Context**

5.1. **Cork County Development Plan 2014**

The site of the proposed development lies outside of any designated ‘High Value’ or sensitive landscape.

6.0 The Appeal

6.1. Appeal by Dan O’Leary

The grounds of the appeal may be synthesised as follows:

- There are extremely high risks to health and safety arising from traffic hazards, dust, pollution, noise, impact on drinking water, livestock, vermin, etc.
- The development contravenes the Wildlife Acts. Gearagh Bog is an area of great natural beauty and is an important wildlife habitat. The applicant’s assessments of the site are questioned. It is submitted that the site is subject to flooding and that all water from this site has to flow northwards to the Ihernagh River. Reference is made to drainage installed which discharges into the river. The bunds and buffer zones are considered to be impractical and ineffective and would be washed away. There is concern about the nature of the materials to be used in the infilling of the site.
- There is an extremely high risk of water pollution. The use of the proposed bunds is unrealistic. It is not credible that surface water would be contained on the site and would not have the potential to infiltrate the drains. Reference is made to EPA findings on the deterioration of river water quality.
- The development contravenes Government policy particularly in relation to Climate Change, Biodiversity, Conservation of the Natural Environment, Carbon, etc.
- It is refuted that the proposal would not seriously injure the amenities of the area and would not be prejudicial to public health. Reference is made to previous works on the site and in its immediate vicinity that have adversely impacted on the amenity of the area.
- The development should be subject to EIA to show the site is an area of ecological importance.

The appeal submission includes a number of photographs and a letter dating from 2008 from residents of the area to the Council objecting to a Waste Permit Application at Gearagh Bog.

6.2. Appeal by Jacinta and Jason Collins

The grounds of the appeal may be synthesised as follows:

- There has been no assessment of the value of the habitats on the site to ensure habitat protection measures are present for all areas adjoining the site. Habitat protection measures for the woodland and riparian vegetation should be specified and conditioned.
- In the NIS no assessment on the potential impacts of importation of invasive species was considered. The import of contaminated soil is likely to have significant negative impacts on local habitats.
- An area of dry meadow grassland is to be removed. This corresponds to the annexed habitat 'lowland hay meadows'. This was concluded to be of 'low ecological significance', with no detailed investigation of the habitat, no species list and no habitat map. An Ecological Impact Assessment should have been requested.
- The area of land is known locally as Gearagh Bog. The correct classification is important. County Development Plan provisions relating to water quality and the prevention of drainage of wetland habitats are noted.
- Broadleaved woodland is located along the western and northern boundaries of the site and is of high ecological value and could contain roosting bats. An EclA should be carried out to determine the impact of the development on this habitat and conditions should be specified to preserve this valuable habitat.
- Given the proximity to the Argideen River, otter could potentially breed within or adjacent to the site. A pre-construction otter survey should be carried out.
- IFI requires a planning condition that there is no interference with watercourses.

6.3. Applicant Response

The applicant's response may be summarised as follows:

- It is only proposed to accept inert soil and stone to return the site to an agricultural field. This will be in line with EPA guidance.
- The applicant discussed access to the site with the Council's Area Engineer and will comply with any restrictions the Council might wish to impose on traffic movements.
- The applicant's Ecologist has confirmed that *Alopecurus pratensis* and *Sanguisorba officinalis* are not present on the site. Dry meadow habitats are not rare and establish quickly when land is unmanaged. The site is not a wetland habitat and no drainage is required on the site. The site activities will not have any impact on surrounding habitats. Noise levels will not exceed levels that already exist in the area from farmyards. A site walkover confirmed there was no evidence of otter holts. There is no interference with any watercourse. The applicant will have a procedure which will include bio-security measures in place relating to invasive species.

6.4. Planning Authority Response

I have no record of any response to the appeal from the planning authority.

7.0 Assessment

7.1. Introduction

- 7.1.1 I consider that the principal planning issues relating to the proposed development at this time are deficiencies in information, appropriate assessment, and the need for Environmental Impact Assessment.

7.2. Deficiencies in Information

7.2.1 The proposed development would comprise the importation of soil and stone to raise the agricultural field in order to improve the agricultural output of this field. The area of the field is 1.57 hectares and over 30,000m³ of materials would be imported onto this site and would raise the level of the land on average by two metres. I note from my site inspection that it appears that this land has previously been disturbed by way of rock movement, soil deposition, etc. which has then been subject to natural recolonisation. While I note that the site itself has no known status as an area of particular conservation value, the sensitivity of watercourses in the immediate vicinity and adjoining woodland habitat is acknowledged. It is apparent that the site at present is of very marginal agricultural value and in its present state could not be used for grazing, tillage or any other functional purpose. The filling of this land to improve its agricultural use may, in principle, be regarded as acceptable. However, what is of particular concern to me in considering the development proposal is what is not known about the proposed development.

7.2.2 The following constitutes some of the information which remains unknown and, in my opinion, with a development of this scale, is critical in determining whether the proposed filling of 30,413m³ of materials constitutes a sustainable development:

- The historical works/filling of the land
- The sources of the materials to be imported
- Quality controls to be employed
- Final capping of the site
- Comprehensive calculation of the estimated volumes of materials for importation
- The transportation of materials and the likely haul routes
- A comprehensive drainage management system
- The duration, phasing and timing of operations
- End use intent
- Embankment/bund design and stability

- Flooding and leachate management
- Invasive species management

7.2.3 It is my submission to the Board that without detailed information on what actually is proposed one cannot reasonably decide on whether the proposal constitutes sustainable development. An example of this could relate to impacts on adjoining watercourses. The applicant proposes to provide a 5m buffer around the perimeter of the site and bunding would be developed. It appears that the applicant intends to wholly contain waters within the site and/or to allow waters within the site to drain through the soils. The soils on this site present as heavy, peat-like material and vegetation colonising this site would indicate that these soils have poor drainage characteristics. The suggestion of retaining waters within the confines of this site and not addressing the collection, management and disposal of waters is not a sustainable, rational approach to maintaining this land as functional agricultural lands into the future.

7.2.4 Clearly, there other issues of concern about what is not known which themselves raise other follow-on potential outcomes that may not permit a reasonable conclusion to be drawn on whether the development would or would not be sustainable, e.g. from where is over 30,000m³ of materials going to be drawn to this remote rural location using narrow, poorly aligned local roads and over what timeframe. There should be some understanding of the likely wider community impacts.

7.2.5 In my opinion, the lack of information available in this application results in one not reasonably being able to determine if the proposed development would have potential significant effects for adjoining watercourses that feed into the Argideen River and which itself feeds into Courtmacsherry Estuary SAC and Courtmacsherry Bay SPA. I accept that the European sites are significantly distant from the site (some 13/14km away) but the issue remains that there is no true understanding of how the proposed development is likely to effect the hydrology and hydrogeology of this area. Thus, it is somewhat premature to be determining that the proposal will not have likely significant effects for European sites.

7.2.6 While I acknowledge the separation distance between the site and European sites and the limited potential a development of this nature at such a distance may likely have for such sites, I note the sensitive habitats in the immediate vicinity of this site,

which includes the Lhernagh River to the north and the adjoining woodland. An acknowledgement of the underdeveloped nature of the site and its relationship with these more sensitive habitats would reasonably point to a need for an ecological impact assessment of the likely impacts of the filling of this site by over 30,000m³ of materials for the site itself and for adjoining lands.

7.2.7 It is my submission to the Board that the application is substantially deficient to allow a reasonable determination on the sustainability of the proposed development.

7.3. Appropriate Assessment

7.3.1 I have already alluded to the deficiencies of water management and the arising drainage concerns relating to the proposed development. The likely significant effects on European sites cannot reasonably be determined at this stage based upon the inadequate level of information available.

7.4. The Need for Environmental Impact Assessment

7.4.1 I note the input from the planning authority's Environment Section in considering this application. This focused primarily on the requirements relating to a waste permit that would be required under the Waste Management Act 1996 and the Waste Facility Permit Regulations 2008. I acknowledge the substantial volume of materials that is proposed to be imported onto this site and that this would require a permit for waste as it would constitute recovery of waste stone, soil, rock, etc.

7.4.2 Schedule 5 of the Planning and Development Regulations 2001 (as amended) refers to development for the purposes of Part 10, namely Environmental Impact Assessment. Paragraph 11 of Part 2 of Schedule 5 includes:

(b) Installations for the disposal of waste with an annual intake greater than 25,000 not included in Part 1 of the Schedule.

7.4.3 Acknowledging the intake for waste disposal facilities that would be required to be subject to EIA and with due regard to the proposal seeking to fill an estimated 30,413m³ of materials on this land, it is reasonable to ascertain that the proposed development would likely be a significant infill operation in terms of potential

environmental impact. While I note that the applicant has submitted that less than 25,000 tonnes of materials would be imported in any given year, it is clear that a development of this scale may potentially have significant environmental impacts.

7.4.4 Further to this, I note that Paragraph 1 of Part 2 of Schedule 5 of the Regulations includes:

Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.

7.4.5 I observe that the land area to be infilled would be 1.57 hectares and would thus be below the area where EIA is mandatory. I also note that the site has not officially been classified as wetland. I acknowledge that this site presents as being previously the subject of works that may have included filling which has distorted the natural character of this land. I observe that it is lowlying land, referred to locally as being part of Gearagh Bog, which likely extends to include the lowlying lands bounding this site. The bogland nature of the lands in this area influences further the demand for comprehensive examination of the potential environmental impacts of the infilling of such lands at the scale proposed.

7.4.6 Having regard to the above, it may be deemed difficult to immediately screen out the need for EIA for the proposed development.

7.4.7 In conclusion, I submit to the Board that assessing the likely environmental impacts of the proposed development is reliant upon detailed baseline information on the area in which the proposed development would take place, a comprehensive description of the project that is proposed, and an informed understanding of mitigation measures proposed to be employed to avoid, reduce and/or minimise environmental impacts. Until the shortfall in information relating to the proposed development is acquired, the environmental impacts of the scale of the development proposed cannot be ascertained. Thus, a reasonable determination on the sustainability of the development cannot be attained at this stage.

8.0 Recommendation

8.1 Having regard to my assessment above, the Board may determine that the only reasonable option to address the deficiencies in information would be by way of seeking comprehensive further information from the applicant. The level of information may potentially be substantial. It is reasonable to determine that a proposal of this nature and scale should have included the range of information at the application stage to allow a detailed assessment of this application leading to an informed decision. The outcome for the proposed development following the necessary baseline studies and mitigation may lead to design variations and a range of construction methodologies to be employed, given the requirement to address an array of potential environmental impacts.

8.2 I, therefore, recommend that further information is sought which would include requesting the following:

- A report on the nature and extent of the historical works/filling of the land at this location;
- Details of the intended sources of the supply of the materials proposed to be imported;
- A programme of quality controls to be employed during the filling of the site and ongoing monitoring provisions;
- Details of the final capping to be used on the site;
- Comprehensive calculation details of the estimated volumes of materials for importation;
- A Traffic and Transportation Assessment which addresses the transportation of materials and the likely haul routes;
- The provision of a comprehensive drainage management system for the site at the construction stage and following completion of the filling of the site;
- Details of the duration, phasing and timing of fill operations;
- A clear understanding of the 'End Use' intent;

- Plans and design provisions relating to proposed embankment/bund design, inclusive of form, scale, height and long-term stability methodologies;
- A Flood Risk Assessment;
- A programme for leachate management, where necessary;
- An invasive species management programme; and
- An Ecological Impact Assessment addressing the likely effects of the development on the site and adjoining lands and the measures to be employed to mitigate any potential adverse impacts.

This information may well be considered significant and the Board may wish to request the publication of public notices following its receipt.

Kevin Moore
Senior Planning Inspector

28th October 2020