



An
Bord
Pleanála

Inspector's Report ABP-309387-21

Question	Whether or not replacement of a wastewater treatment plan is or not development or is or is not exempted development.
Location	Potter's Point, Brittas Bay, Co. Wicklow.
Declaration	
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	EX80/2020
Applicant for Declaration	Potters Point Ltd
Planning Authority Decision	Is not exempted development
Referral	
Referred by	Potters Point Ltd
Owner/ Occupier	Potters Point Ltd
Observer(s)	None
Date of Site Inspection	13/4/2021
Inspector	Suzanne Kehely

1.0 Site Location

- 1.1. The site relates to a coastal mobile home park that is privately owned and managed. The overall site extends to 37.3ha and includes 176 mobile homes with ancillary recreational amenities such as golf clubhouse, tennis courts and extensive open space with frontage access to the beach at Brittas Bay. The wastewater treatment plant is located in an enclosed and screened compound to the south east of the complex removed from the mobile homes. There is a locked gate and high fence with mature hedging around the perimeter.
- 1.2. Photographs of the WWTP compound are included in the referrer's report in addition to those from my site inspection.

2.0 The Development

- 2.1. The existing WWTP is described as being 35 years old and at the end of its operational life and has suffered structural deterioration. It consists of inlet works and a secondary aeration system (activated sludge) and final clarifier.
- 2.2. It is proposed to replace it with a modern treatment system. The main elements are: an improved automated inlet works- primary settlement , a secondary aeration system (modified activated sludge) as well as designated flow balancing, sludge holding tanks and a tertiary UV chamber with flow monitoring and automated sampling.
- 2.3. The upgrade will increase the aeration capacity (by 30%) and will have more flexibility to deal with seasonal peaks and troughs. It is stated that it will not increase the volume of effluent discharged to the sea.

3.0 The Question

- 3.1. Whether the replacement of the WWTS is or is not exempted development.

4.0 Planning Authority Declaration

4.1. Declaration

- 4.1.1. On the 8th January 2021, the Planning Authority issued a declaration that “The replacement of a wastewater treatment plant is development and is not exempted development within the meaning of the Planning and Development Act, 2000 as amended”.

4.2. Planning Authority Report

- 4.2.1. The report makes reference to a comprehensive list of decisions by the Board in relation to WWTPs.
- 4.2.2. As the proposal is to replace rather than maintain or improve a structure, the works do not fall under S. 4(1)(h) of the Planning and Development Act 2000 as amended and are not exempted development.
- 4.2.3. There is no evidence of a statutory need to comply with a licence (either under the Local Government (Sanitary Services) Act 1948 or Local Government (Water Pollution Act) 1977) and so the provisions for exemption for Class 41 under the Planning and Development Regulations 2001 as amended, do not apply.

5.0 Planning History

5.1. The site – permissions

PA reg ref 76/70 - permission for sanitary services and layout revisions to caravan park

PA reg ref 76/1060 /ABP ref PL27/5/38291– permission for alteration to caravan park

PA reg ref 83/8819 – permission for caravan park and sewage treatment works

PA reg ref 84/107/ABP ref PL27/5/66742 - permission for extension to caravan park and sewage treatment plant

PA reg ref 85/1294 - permission for extension to sewage treatment plant

PA reg ref 90/5793/ABP ref PL27/5/84241 – permission for demolition of derelict chalets and erection of 3 caravan units

PA reg ref 92/8056 /ABP ref PL27/5/89756– renewal of permission and retention of development for caravan park

PA reg ref 96/5001 – Permission for machinery store for golf course.

5.2. Relevant Referral Case

- 5.2.1. **ABP-305218-19 (2019) and 302930-18:** Both cases asked whether the refurbishment of a timber house and associated infrastructure at The Chalet, Furbo Hill, Spiddal, County Galway is or is not development or is or is not exempted development. The Board declared that the development involving the repair/upgrade of a septic tank and the provision of a percolation area, if the subject of an advisory notice under Section 70(H)(5) of the Water Services Act 2002, as amended, would be exempted development under Class 41(g) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, but as no evidence of the service of such notice has been supplied as part of this referral, the development in question is not exempted development.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. Pursuant to section 5(2)(a) the question is asked is

Is the replacement of the wastewater treatment plant exempt from obtaining permission for development having regard in particular to section 4(1)(h) of the Planning and Development Acts 2000-2020 and to Class 41 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001-2020.

- 6.1.2. The submission presents reasons and arguments, as follows:

- The proposal to removal all existing tanks and structures and replace with new WWTP is considered to be exempt under 4(1)(h) as the works amount to improvements to a current structure. As it is underground and well screened there is no visually material impact to the external appearance to the structure. It is not inconsistent with the neighbouring structures.

Although larger it is a like for like replacement – there will be no material intensification of use consequent on the development.

- The proposal is exempt as it development in accords with the licence under the LG (SS) Act 1948 and the LG (WP) Act 1977. It is emphasised that Class 41 exemption permits exemption to the carrying to any works on land which are in accordance with and necessary for compliance with the terms of any licence granted under section 34 of the Local Government (Sanitary Services) Act, 1948.
- The cases relied on for precedence by the planning authority are not substantially relevant. 302930 refers to a timber house and infrastructure , RL3532 and RL 2340 refers to a new septic tank where there is none, whereas RL3233 and RL2850 which involved tanks and were declared exempt, are more relevant in that they refer to replacement underground tanks.
- It is explained the existing system is 35 years old and at the end of its operational life and it is important to replace it prior to issues arising that could affects its performance.
- The existing system aeration capacity is at its limit during absolute peak season.
- The proposal amounts to an upgrade to an existing system.
- There will be no increase in mobile homes or consequently effluent discharge to the sea.
- A number of elements are to be incorporated to improve compliance, increase capacity and prolong operational life as set out in the report.
- The proposed works will have a number of benefits for the community, the environment and the receiving water including the coastline of Brittas Bay. these include better screening and filtering of larger materials so as to enable improved mechanical functioning, control of flows to treatments (e.g. enabling storm water flow management), capacity for seasonality of use, , new sludge holding tank, UV treatment to improve bathing waters, sampling facilitating and

improved monitoring which will provide a modern reliable robust treatment process for at least the next 20 years.

- There will be no environmental impact consequent on noise, odour or visual impacts.
- The replacement system will serve the site to ensure compliance with the existing Sanitary Services Licence and existing Wastewater Discharge License. The proposed new WWTP will remove the risks associated with the existing system in terms of potential failure and impact on effluent quality due to age. It will also facilitate continued monitoring of influent and effluent.

6.1.3. The referral is accompanied by the following:

- A WCC Section 5 Declaration (8/1/21)
- B WCC Planner's Report (6/1/21)
- C Sanitary Service Licence authorising on 29th July 2020 under the Local Government (Sanitary Services) Act 1948. This sets out 16 conditions. Condition 7 requires a License under the Water Pollution Act 1977
- D Wastewater Discharge Licences issued in 1987 (ref ESS/14/14/186)
- E Existing Site Layout Plan
- F Proposed Site Layout Plan
- G Proposed Site Section

6.2. **Planning Authority Response**

6.2.1. None on file.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

7.1.1. Section 2 (1) of the Act provides the following definitions of relevance:

“works” - “...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....”

7.1.2. Section 3(1) of the Act states the following in respect of ‘development’:

“In this Act, ‘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.”

7.1.3. Section 4(1)(a)(i) sets out what is exempted development for the purpose of the Act- (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

7.1.4. Section 4(2) provides for the making of the Regulations, Planning and Development Regulations, 2001.

7.1.5. Section 4(4) states - Notwithstanding *paragraphs (a) , (i) , (ia) and (l) of subsection (1) and any regulations under subsection (2) , development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

7.1.6. Section 5(3)(A) states the following:

“Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of issuing the declaration.”

7.2. **Planning and Development Regulations, 2001**

7.2.1. Pursuant to Article 6 - Part 1 Schedule 2 – Exempted Development - Class 41 (a):

“Works consisting of or incidental to— (a) the carrying out of any works on land which are in accordance with, and necessary for compliance with, the terms of any licence granted under section 34 of the Local Government (Sanitary Services) Act, 1948, but not including the erection of any building, hut or chalet or the construction of any road or hard-standing,”

7.2.2. Section 9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would—

(vi)interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

7.3. **Local Government Water Pollution Act 1977.**

Section 10.—(1) Where it appears to a local authority, the Minister for Fisheries or a board of conservators that a contravention of section 3 (1) or 4 (1) has occurred or is occurring, the authority, the Minister for Fisheries or the board may apply to the District Court for an order directing such person as may be named in the order to mitigate or remedy any effects of the contravention within such period and in such manner as may be specified in the order.

Section 13 refers to powers of the local authority to prevent and abate pollution in certain circumstances.—(1) Where it appears to a local authority that urgent measures are necessary to prevent pollution of any waters in its functional area, to remove polluting matter from waters in that area, or, while such matter is in waters outside that area, to prevent it affecting any part of that area, the local authority may take such steps, carry out such operations or give such assistance as it considers necessary to prevent such matter from entering the waters, to remove the matter from the waters, to dispose of it as it thinks fit and to mitigate or remedy the effects of any pollution caused by the matter.

Section 16 provides for review of licenses.

8.0 Policy Context

8.1. Wicklow County Development Plan 2016-2022

- 8.1.1. The site is located in Coast Area - Area of Outstanding Natural Beauty as mapped in Appendix 4 of the Development Plan.

8.2. Natural Heritage Designations

- 8.2.1. The site is not located within a designated Natura 2000 site. Special Area of Conservation: Buckronev-Brittis Dunes and Fen SAC (site code 000729) is about 150m southwest of the site.

9.0 Assessment

9.1. Preliminary Matters

- 9.1.1. A determination is sought in respect of the replacement of wastewater treatment plant and as to whether its provision is or is not exempted development.
- 9.1.2. It is important to emphasise that the referral is not for the purpose of deciding on the merits of the development at issue but rather is confined to determine if the works amounts to development and whether or not it is exempted by reference to the legislative provisions.

9.2. Is it Development?

- 9.2.1. I consider the works which include the removal of tanks and associated infrastructure and the replacement with new treatment plans and associated excavations and construction amounts to works and therefore comes with the meaning of development in accordance with section 3 of the planning and Development Act., 2000 as amended. This is consistent the Board determination under ABP-305218-19, in respect of the works relating to a replacement septic tank development. The question at issue, is whether the development is exempted development.

9.3. **Is or is not exempted development under S.4(1) (h)**

- 9.3.1. As the proposal is to replace with a new structure and system rather than for the purpose of maintenance, improvement or other alterations of the original structure I do not consider the works to fall under S. 4(1)(h) of the Planning and Development Act 2000 as amended and are not exempted development.
- 9.3.2. I do not consider the case in relation to the replacement of fuel storage tanks is directly relevant as in that case the tanks were related solely to underground containerised storage and did not involve any processing of waste or discharging to the receiving environment. In this case it is redesign albeit on the face of it, improved in many respects (but the merits of the case are not relevant) and I consider the Board's determinations in relation to replacement wastewater treatment plants, notwithstanding their domestic scale, to be more salient considerations.

9.4. **Is or is not exempted development as being defined within Class 41 (a):**

- 9.4.1. This class of development is exempt in circumstances whereby works are consistent with or incidental to the carrying out of any works on land which are in accordance with, and necessary for compliance with, the terms of any licence granted under section 34 of the Local Government (Sanitary Services) Act, 1948.
- 9.4.2. In this case the existing owner/lands have a licence (issued most recently in 2020) for a caravan park subject to a condition 7 which requires compliance with the Water Pollution Act(s). This Act confers powers on the local authority to ensure protection of waters.
- 9.4.3. In this case the referrer makes the case that the subject works are necessary by reference to the deteriorating condition and potentially compromised performance as the treatment plant reaches its life after 35years, although there is no evidence of breach of standards and the works are essentially pre-empting any possible substandard operation. While clearly there are merits in an upgraded system in a more modern and robust system and in terms of monitoring and managing the seasonality, I note the works are not supported by any formal direction from the licensing authority other than been implied in the conditions of the licence. The question is what constitutes necessary within the context of Class 41.

- 9.4.4. At one level clearly if the treatment plant has a life, has sustained normal wear and tear and the conditions of the licence set clearly definable parameters which must be met there is a case that this constitutes need. The details submitted are not supported by any measurable outputs. If the Board wishes to pursue this as a means to considering the works to qualify for exemption, I consider further details would be needed in this regard. However it is clear in the case of septic tanks before the Board for determination that replacement is only considered exempt by the Board in the case where the owner is advised that works intended were consequent on an advisory notice under section 70(H)(5) of the Water Services Act. Essentially 'necessary' is consequent on a direct statutory direction. No comparable direction has issued in this instance. However I would point out that septic tanks are subject to a different regulatory control, not subject to the same licencing but requiring repair or replacement as identified by the county council through the National Inspection Plan which is facilitated by this exemption.
- 9.4.5. On balance I do not consider the referrer has demonstrated that such works are necessary by reference to the specific requirements of a statutory authority. The exemption offered for class 41 does not therefore apply.

9.5. **Appropriate Assessment**

- 9.5.1. The site is not located within a designated Natura 2000 site. Special Area of Conservation however Buckroneys-Brittis Dunes and Fen SAC (site code 000729) is about 150m southwest of the site. It is described as
- 9.5.2. Buckroneys-Brittis Dunes and Fen is a complex of coastal habitats located about 10 km south of Wicklow town. It comprises two main sand dune systems, Brittis Bay and Buckroneys Dunes, connected on the coast by the rocky headland of Mizen Head. The dunes have cut off the outflow of a small river at Mizen Head and a fen, Buckroneys Fen, has developed. A further small sand dune system occurs south of Pennycomequick Bridge and is selected for number of habitats.
- 9.5.3. [1210] Annual Vegetation of Drift Lines [1220] Perennial Vegetation of Stony Banks [1410] Mediterranean Salt Meadows [2110] Embryonic Shifting Dunes [2120] Marram Dunes (White Dunes) [2130] Fixed Dunes (Grey Dunes)* [2150] Decalcified

Dune Heath* [2170] Dunes with Creeping Willow [2190] Humid Dune Slacks [7230] Alkaline Fens.

- 9.5.4. The site is further described as important given its extensive sand dune/fen system with well developed plant communities. Several coastal habitats listed on the E.U. Habitats Directive, including two priority habitats - fixed dune and decalcified dune heath - are present. The area contains two legally protected plants, as well as a number of other rare or scarce plant species. The site provides habitat for some rare species of invertebrate and for the vulnerable Little Tern. A rich flora and fauna has persisted on this site despite extensive amenity use and adjacent farming. However, future land use practices will need to be managed to ensure the continued survival of this unique mosaic of coastal habitats.
- 9.5.5. In a monitoring Map 'Revised Baseline Habitats Map' the habitats are mapped in detail. This informs the Conservation objectives supporting document – Coastal Habitats (2017) The nearest section of the site is classed as “WS Scrub , transitional woodland” and there is a river to the south of this which separates the woodland from the dunes, heaths and other habitats as detailed in the map.
- 9.5.6. This document refers (in section 4 Impacts and Activities) to an issue with water abstraction and impact on vegetation- it is not clear how the proposal will impact on this if at all.
- 9.5.7. The submitted plans show a detailed layout of the treatment plant but do not show any outfall point although it is required to be at least 30m beyond the shore line. It is likely to be down gradient to the sea at a point north of the coastline of the SAC. However in the absence of such details of flow and discharge, a pathway or lack of cannot be determined.
- 9.5.8. While it could be argued that the proposal facilitates the protection of the environment there is no baseline data to assess this. Notwithstanding there is also the potential for effects arising at construction stage. Based on the information submitted it cannot be determined if the project is likely to have a significant effect either individually or in combination with other plans and projects on the Buckroneys-Brittans Dunes and Fen SAC (site code 000729) in view of its conservation objectives.
- 9.5.9. As a precautionary approach I consider a NIS is required in order to carry out an Appropriate Assessment screening. Accordingly in the absence of such the Board is

precluded from determining exemption in this regard by reference to Section 4(4) of the Act.

9.6. Conclusion

- 9.6.1. I am satisfied that there are no other provisions, in the Planning and Development Act 2000, as amended or in the Planning and Development Regulations, 2001, as amended, whereby this development would be classified as exempted development, and this development is, therefore, not exempted development.

10.0 Recommendation

- 10.1. 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 replacement of a wastewater treatment plan at Brittas Bay, County Wicklow is or is not development or is or is not exempted development:

AND WHEREAS Potters Point Ltd of Brittas Bay, County Wicklow requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 8th day of January, 2021 stating that the matters in question were development and were not exempted development:

AND WHEREAS Potters Point Ltd referred the declaration for review to An Bord Pleanála on the 4th day of February, 2021

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

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Classes 41 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,

(d) The licence issued to Potters Point Ltd under Section 34 of the Local Government (Sanitary Services) Act 1948 and the Discharge Licence issued to Potters Point Ltd under the Local Government (Water Pollution) Act, 1977

(e) the submissions on file, including photographs submitted by the referrer and

(f) the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded that -

(a) the development involving the replacement of the wastewater treatment plant if the subject of an advisory statutory notice, would be exempted development under Class 41 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, but as no evidence of the service of such notice has been supplied as part of this referral, the development in question is not exempted development,

(d) there are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby this development would be classified as exempted development, and this development is, therefore, not exempted development,

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the replacement of a wastewater treatment plan is development and is not exempted development, at, Brittas Bay, County Wicklow.

Suzanne Kehely
Senior Planning Inspector

31 May 2021