



An
Bord
Pleanála

Inspector's Report ABP-309575-21

Question

Whether on site surface water management/cessation of surface water discharge is or is not development and is or is not exempted development.

Location

Ballymullen, Abbeyleix, Co. Laois

Declaration

Planning Authority

Laois County Council

Planning Authority Reg. Ref.

10/5

Applicant for Declaration

Booth Precast Limited

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Booth Precast Limited

Owner/ Occupier

Booth Precast

Observer(s)

None

Date of Site Inspection

21st May, 2021

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. This case relates to a referral submitted under s.5(3)(a) of the Planning and Development Act, 2000 (as amended) where the Planning Authority has issued a declaration on a referral and this determination is now the subject of appeal.
- 1.2. The site of the subject referral is located approximately 2km to the north west of the village of Ballinakill and c.2.5km to the south of Abbeyleix. The site is accessed via the local road that connects Ballinakill and Abbeyleix and which connects with the N77 at Ballymullen Cross immediately to the south of Abbeyleix. This local road is narrow and has poor horizontal alignment. The access to the Booth Precast site itself is via a long access road off the local road.
- 1.3. The site the subject of this referral comprises the majority of the lands that are part of the operation of Booth Precast in this location. The existing operation on the site and included within the identified site boundary comprise a number of activities and areas with the most significant being the manufacture of precast concrete products, concrete plant, and sand and gravel processing / washing.
- 1.4. It should be noted that there is a concurrent referral on the site relating to the use of an outdoor gantry crane (ABP Ref. ABP-309964-21) and this file accompanies the current case. This report should be read in conjunction with this concurrent case.
- 1.5. The exact extent of the site is not specified in the application documentation, however the area indicated as being within the boundary for the purposes of the section 5 application is significant and includes the surface water detention ponds / reed bed area located at the north west end of the site, recently constructed surface water ponds and associated infrastructure including washing plant located in the centre of the northern end of the site, reinstatement area on the eastern side of the site, office accommodation in the centre of the site and concrete production facilities / sheds and hard standing located towards the southern end of the site. The basic layout of the site and the site boundary is illustrated on the Location Map (Drg. No. 20/56/C/002/PP/0) received by the Board on 19th March, 2021.

2.0 The Question

2.1. The question as posed by the referrer is as follows:

'Whether the on site surface water management / cessation of surface water discharge is or is not development and is or is not exempted development.'

2.2. Under the heading of *'What is being assessed'* the report of the Planning Officer dated 26th January, 2021 identifies the following items which are illustrated in Drg. No. 20-056-P-02-00 Rev 0 as forming part of the referral under Section 5:

- Silt pond lagoon No.1
- Silt pond lagoon No.2,
- Open drain from pond No.1 to Pond No.2 and
- New pump to washing plant.

2.3. In my opinion neither the question as posed by the referrer and set out above nor the outline of the proposals as set out in the report of the Planning Officer give a full picture of the scope and extent of the works which appear to have been undertaken in connection with the surface water discharge from the site. For context and to assist in the drafting of the appropriate question to be the subject of assessment, the following sections set out a brief description of the original surface water layout and the revisions undertaken and proposed and which form part of the subject referral.

2.4. Based on the previous layout on file and from observations at the time of the site inspection, what previously occurred at the site was that water from the on site wash plant was collected in an underground sump and pumped using a diesel pump to the settlement ponds / reed beds located on the western side of the site (the area within the green dashed line on the submitted Drg. No. 20-056-P-02-00). These ponds / reed bed areas drained to the south where there was a discharge point to a watercourse that runs along the western side of the site and runs to the south. This discharge point was the subject of licence from the local authority.

2.5. The stated changes to the surface water layout undertaken are that the discharge from the wash plant and associated silt laden water, are now discharged to and collected in an open sump which is surrounded by a handrail. This sump is diverted

to 2 no. new electric pumps, the control equipment for which is located in a small pumphouse building adjacent to the sump and these pumps pump silt laden water via an underground pipe, identified as 12 on Drg. No. 20-056-P-02-00, to a new lagoon a short distance to the north of the pumphouse. There is also an underground overflow pipe from this new sump to the original wetlands / lagoon which is stated to be used in the event of a pump failure and is identified as No.5 on Drg. No. 20-056-P-02-00. The new lagoon is identified as '*Silt Pond / Lagoon No.1*' on Drg. No. 20-056-P-02-00. The connection from the wash plant to the pump house is identified as No.7 on Drg. No. 20-056-P-02-00 and the new pumphouse is identified as No.6 on the same plan. Silt is allowed to settle in the new lagoon and is dug out every couple of days by mechanical excavator and used to reinstate worked areas of the site. The original connection between the sump and the wetland / lagoons on the western side of the site has been closed and an overflow pipe installed (identified as No.2 on the submitted drawing) between the new lagoon (No.1) and the ponds / reed beds on the western side of the site. At the time of inspection, relatively clear water was observed to be flowing from this pipe into the wetland / lagoon area.

2.6. The plans show other changes which include the following :

- No.4 which is a silt pond on the eastern side of the site and identified as 'New Silt Pond Lagoon No.2' on the submitted drawing Drg. No. 20-056-P-02-00. Settled water from Silt Pond No.1 is diverted via a largely open drain (identified as No.3 on Drg. No. 20-056-P-02-00) to silt pond No.2 (identified as No.4 on Drg. No. 20-056-P-02-00) and pumped from there to be reused in the wash plant.
- No.15 on Drg. No. 20-056-P-02-00 relates to 'New Pump to Washing Plant' and this pump is indicated as being at the southern end of No.4 (New Silt Pond No.2).
- There are 3 no. additional smaller silt ponds identified at the southern end of the site (identified as No.18 on Drg. No. 20-056-P-02-00). These ponds are indicated as collecting water from hardstanding areas at the southern end of the site in the vicinity of the concrete products storage yard.

In addition to the above, during the course of the site inspection there were a number of other aspects connected with the drainage arrangements at the site that were observed and where works would appear to have occurred or being undertaken. These include what appears to be the raising of the embankment at the southern end of the reed bed / wetland area indicated as No.10 on Drg. No. 20-056-P-02-00 and the deposition of silt excavated from silt pond / lagoon No.1 (No.1 on Drg. No. 20-056-P-02-00) which it would appear is being used for reinstatement of previously excavated area at the north eastern end of the site. For the avoidance of doubt, these aspects activity on the site are not included in the assessment of this referral.

2.7. In view of the above it is recommended that the question be reworded as follows:

'Whether revisions to the on site management of surface water within an existing facility for the manufacture of concrete products as detailed on Drg. No. 20-056-P-02-00 including the creation of new surface water / silt ponds, re circulation of surface water on site and the cessation of surface water discharge to adjoining watercourse is or is not development and is or is not exempted development.'

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority issued a declaration dated 01st February, 2021 determining that the works the subject of the referral were development and were not exempted development.

In making this determination the Planning Authority decision makes specific reference to Class 21 of Part I of the Second Schedule of the Planning and Development Regulations, 2001 (as amended) and associated conditions and limitations and also to Section 4(1)(h) of the Planning and Development Act, 2000 as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer notes the case made by the referrer and the significant planning history on the site. Noted that the submission of the referrer makes reference to s.4(1)(h) of the Act and to Class 21 of the Second Schedule of the Regulations.

Specifically, the Planning Officer did not consider that s.4(1)(h) was applicable on the basis that the works were not to an existing structure. Stated that *'the pumping station is development and is not exempted development'*

With regard to Class 21 of the Planning and Development Regulations, the referrer is accepted as being an 'industrial undertaker' involved in an industrial process however Class 21 is not considered applicable as the development does not relate to the maintenance of private ways or railways (Part a(i)) and they are not within the curtilage of an industrial building (Part b). Parts a(ii) and a(iii) are not considered applicable on the basis that the works relate to areas of the site not currently used for an industrial purpose and the works therefore fall outside the conditions and limitations for Class 21.

4.0 Planning History

4.1. Site Planning History

The following planning history relates to the Booth Concrete site and is referenced on file.

- Laois County Council Ref. 10/290; ABP Ref. PL11.239204 – Permission granted by the Planning Authority and decision upheld on appeal to the Board for the retention of an existing precast concrete manufacturing building.
- Laois County Council Ref. 10/289; ABP Ref. PL11.239205 – Permission granted by the planning authority and decision upheld on appeal to the Board for the retention of an existing single story maintenance garage building.

- Laois County Council Ref. 10/288; ABP Ref. PL11.239206 – Permission granted by the Planning Authority and upheld on appeal for the retention of an existing precast concrete product manufacturing building.
- Laois County Council Ref. 07/1451 – Permission granted for the replacement of existing hardstanding area with a concrete surface.
- Laois County Council Ref. 06/24; ABP Ref. PL11.218941 – Permission granted by the Planning authority and upheld on appeal for the retention of existing industrial unit with office, toilets and septic tank plus hardstanding and car parking area.
- Laois County Council Ref. 98/780 – Permission granted by the Planning authority for the construction of a two storey office building ancillary to the existing concrete works.
- Laois County Council Ref. 95/300 – Permission granted by the planning authority for the retention of the concrete plant, extraction of sand and gravel and washing facility.

4.2. Relevant Referral Cases

- 4.2.1. I have undertaken a review of the referrals database in order to determine if there are any history cases that relate to development of the same form as that the subject of this case. No examples very similar to the current case were identified however the following are noted:

RL.2348 - Whether the replacement of fixed sand and gravel processing plant is or is not exempted development the Board determined that the proposal was development and was not exempted development on the basis that the replacement plant would exceed 15 metres and therefore exceed the conditions and limitations attached to Class 21 of Part 1 of the Second Schedule of the *Planning and Development Regulations, 2001*.

RL2253 – whether earth works and a lagoon for the storage of soiled water is or is not development and is or is not exempted development. The Board determined that earth works and a constructed lagoon within an agricultural holding was

development and was not exempted development on the basis that the works did not come within the scope of s.4(1)(a) of the Act

RL3030 – whether drainage works carried out at Grassland Fertilizers Kilkenny limited is or is not development and is or is not exempted development. Decided that the works were development and were exempted development on the basis of Class 41(c) of Part 1 and s.4(1)(h) of the Act. (exemption on the basis of drainage works required under a notice issued under s.12 of the Local Government (Water Pollution) Act, 1977.

5.0 Policy Context

5.1. Development Plan

The site is located on lands that are located outside of any identified settlement and which are not zoned for any particular purpose. There are no specific objectives relating to the site, including any objectives relating to landscape or visual designations or the protection of views or prospects.

5.2. Natural Heritage Designations

The site is not located within or close to any European sites.

- Lisbigney Bog SAC (site code 000869) which is located c.2.5km to the south of the site at the closest point.
- The River Barrow and River Nore SAC (site code 002162) which is located c.2km to the south west of the subject site at the closest point,
- The River Nore SPA (site code 004233) which is also located c.2km to the south west of the subject site at the closest point.

6.0 The Referral

6.1. Referrer's Case

The following is a summary of the main issues raised in the case made by the referrer both in the submission to the Planning Authority and the referral request submitted to the Board:

- That the referral relates to surface water management improvement works carried out and to be completed at Booth Precast Limited site at Ballymullen, Abbeyleix, Co. Laois.
- That the planning history of the site indicates that the site comprises an industrial facility for the processing of aggregates and manufacture of concrete products.
- That the structure / plant the subject of the section 5 referral is internal to the overall site, is not generally visible from the site boundary, is less than 15 metres in height and does not materially change the appearance of the facility.
- It is therefore submitted that the provisions of s.4(1)(h) of the Planning and Development Act are relevant to the consideration of the request. Specifically, it is submitted that the development the subject of the referral is *'...interior to the industrial facility which can reasonably be viewed as a structure...'* and therefore that the development is exempt under this section.
- That the development on site is exempt by reference to Class 21 of Part 1 of the Second Schedule being development *'carried out by an industrial undertaker on lands used by such an undertaker for an industrial purpose (ii) the provision, re arrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus, (iii) the installation or erection by way of addition or replacement of plant or machinery or structures of the nature of plant and machinery, (b) any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried out in the building'*.

- Submitted that the pumping station is an addition to plant which is covered by Class 21 on the basis that the electrical switchgear '*...improves the effectiveness of the site water management system, eliminating the need for the authorised discharge for best environmental benefit. It may be seen as additional plant required for the permitted activities which they serve*'.
- That none of the limitations on the exemptions provided for under Art. 6 as set out in Article 9 of the Planning and Development Regulations are applicable in this case.
- That visual surveys of the site indicate that since 2010 there have been no significant changes to the pond / wetland area on the western side of the site identified as No.10 on the submitted drawing No. 20-056-P-02 or to the hardstanding or washing areas feeding this pond / wetland area.
- That storage calculations regarding the capacity of the lagoon to accommodate surface water runoff have been undertaken. The ponds at the southern end of the site (indicated as No.18 on the submitted Site Plan (Drg. No. 20-056-P-02-00) are stated to be required to store rainfall from a 1 in 100 year event and have not yet been constructed. Such works would be undertaken within 6 months.

6.2. Planning Authority Response

The response received from the Planning Authority states as follows:

- That prior to making its decision, the Planning Authority undertook a detailed assessment of the details submitted and assessed the application against the provisions of the Planning and development Act and Regulations.
- That a decision was issued by the Planning authority on 1st February, 2021 and the reasons for that decision are clearly set out in the Planning Officer report.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

3.—(1) 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.

4.—(1) The following shall be exempted developments for the purposes of this 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;

7.2. Planning and Development Regulations, 2001

Part 1 of the Second Schedule

Development for industrial purposes

Class 21

(a) 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—

(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings, or conveyors,

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

(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

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 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

8.0 Assessment

8.1. Introduction

- 8.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the surface water management works and cessation of surface water discharge in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. Likewise planning enforcement is a matter for the Board and does not fall within the jurisdiction of the Board.

8.2. Is or is not development

- 8.2.1. The subject of this referral includes the construction of new ponds, the installation of drainage connections / pipes between these ponds and the existing pond / reed bed area at the western side of the site and the pump sump and the construction of a new pump house. In my opinion these elements comprise works on in or under land and therefore comes within the scope of the definition of development as set out at s.3 of the Planning and Development Act as amended.

8.2.2. With regard to the change of use element of the definition of development given at s.3 of the Act, the nature of the works undertaken is such that I do not consider that an actual change of use in the site has occurred. Given this I do not consider that the use of the overall site cannot be considered to have materially changed and therefore development by reason of a change of use of the site has not occurred.

8.3. Is or is not exempted development

S4(1)(h) Planning and Development Act, 2000 (as amended)

8.3.1. The referrer makes the case that the works undertaken and proposed to be undertaken at the site are exempted development having regard to s.4(1)(h) of the Planning and Development Act, 2000 (as amended). Specifically, it is contended that the planning history of the site indicates that the site comprises an industrial facility for the processing of aggregates and manufacture of concrete products and that the works the subject of the referral are located internal to the overall site, are not generally visible from the site boundary and do not materially change the appearance of the facility.

8.3.2. It is therefore submitted that the provisions of s.4(1)(h) of the Planning and Development Act are relevant to the consideration of the request. Specifically, it is submitted that the development the subject of the referral is '*...interior to the industrial facility which can reasonably be viewed as a structure...*' and therefore that the development is exempt under this section.

8.3.3. s.4(1) states that the following shall be exempted developments for the purposes of this 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;

8.3.4. S.2(1) of the Act gives the following definitions:

“structure” means 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—

(a) where the context so admits, includes the land on, in or under which the structure is situate,

8.3.5. The first question of relevance to compliance or otherwise with s.4(1)(h) is whether the works undertaken and proposed to be undertaken in this case are to a structure as defined in the Act. The first party contends that the overall facility at the Ballymullen site is authorised, that the site comprises an industrial facility for the processing of aggregates and manufacture of concrete products and that the works the subject of the referral are ‘...*interior to the industrial facility which can reasonably be viewed as a structure...*’ and therefore that the development is exempt under this section.

8.3.6. I accept that there are existing permissions in place for the use of the wider site as an industrial facility however I do not agree with the interpretation of the first party that the overall industrial facility on the site should be considered to constitute a ‘structure’ for the purposes of s.4(1)(h). The wording of the definition of structure cited at s.3 of the Act makes reference to any ‘*building, structure, excavation, or other thing constructed or made on, in or under any land...*’. The nature of the works the subject of the subject referral are in my opinion not all such that they do not relate to any specific existing building or structure. While the definition does specifically make reference to ‘*excavation*’, the works the subject of this referral provide for new excavations in the form of the newly constructed silt ponds / lagoons Nos. 1 and 2 and the running of new pipes to and from these ponds. These aspects of the works undertaken do not therefore in my opinion relate to works to any existing structure but rather the creation of new structures and do not therefore in my opinion come within s.4(1)(h) of the Act.

8.3.7. Other aspects of the works undertaken, specifically those to the pump sump and the development of the new above ground pump house, the works to the existing pond / reed bed / wetland area (Nos. 8, 9 and 10 on Drg No. 20-056-P-02-00) and the

decommissioning of the existing outfall from the site could in my opinion be considered to constitute works to existing structures.

- 8.3.8. The second question relating to the applicability of s.4(1)(h) relates to the degree to which the works undertaken can be seen to comprise works for the '*maintenance, improvement or other alteration*' of a structure. In the case of the new silt ponds / lagoons identified as Nos. 1 and 4 on Drg No. 20-056-P-02-00, notwithstanding the fact that I do not consider that the works relate to a structure, the nature of the works are such that they are in my opinion additional or new works rather than works for maintenance, improvement or other alteration. Similarly, in addition to not being 'structures' within the definition given in the Act, the works in the form of the laying of new pipe connections across the site connecting the sump area and the new lagoons are in my opinion new or additional works and are not works that can reasonably be seen to constitute works of maintenance, improvement or other alteration. In the case of the works to the pump sump including the addition of the pump house controls and building and the new pumphouse to Silt Pond / Lagoon No.2 I consider that the works to the existing pump house location (No.6 on Drg No. 20-056-P-02-00) could be considered to be works of improvement or other alteration as could the works for the closure of the surface water discharge point from the site. The construction of a new pumping location and new pump house at location No15 is however a new piece of infrastructure and such that it would in my opinion constitute new or additional infrastructure rather than reasonably being works of maintenance, improvement, or other alteration.
- 8.3.9. Thirdly in the context of s.4(1)(h), given the scale, location and industrial nature of the site, the separation of the works undertaken from site boundaries and the absence of clear views of the works from outside the site, I do not consider that any of the works undertaken would 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.
- 8.3.10. In summary therefore I consider that the bulk of the works undertaken and subject of this referral including the new ponds (Nos. 1 and 4 on Drg No. 20-056-P-02-00), pipe runs and the new pumping location identified at No.15 on Drg No. 20-056-P-02-00 are not existing structures and that the act of constructing these aspects of the works cannot reasonably be considered to constitute works of maintenance improvement

or other alteration as specified in s.4(1)(h) instead constituting new or additional works on the site. In my opinion, these works cannot therefore be considered to come within s.4(1)(h) of the Act.

8.3.11. I do not consider that there are any other parts of s.4(1) of the Act which are applicable to the circumstances of the subject case.

Planning and Development Regulations, 2001 (as amended)

8.3.12. Under the Planning and Development Regulations, 2001 the most relevant exemption class is under the heading of Development for Industrial Purposes at Class 21 of Part 1 of the Second Schedule. This class states as follows:

Development for industrial purposes

CLASS 21

(a) 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—

- (i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,
- (ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,
- (iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

- 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 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

8.3.13. The referrer contends that the works undertaken on site and the subject of the referral are exempt by reference to Class 21 of Part 1 of the Second Schedule being development carried out by an industrial undertaker on lands used by such an undertaker for an industrial purpose.

8.3.14. Article 5 of the Planning and Development Regulations, 2001 (as amended) defines an industrial undertaker as follows:

“industrial undertaker” means a person by whom an industrial process is carried on and “industrial undertaking” shall be construed accordingly;

8.3.15. In the circumstances of the subject referral, I consider that the referrer comes within the definition of a statutory undertaker as defined in Article 3 and that the activity undertaken on the site is an industrial undertaking.

8.3.16. The development undertaken or proposed to be undertaken on the site does not comprise development relating to private ways or railways Class 21 (a)(i). In my opinion the laying of new pipes connecting the pumping station to the new ponds and connecting the new ponds to each other could be considered to constitute the laying of pipes or other apparatus that would be consistent with Class 21 (a)(ii) and would be such as to meet the conditions and limitations on this class being development that is less than 15 metres in height and not being such as to materially alter the external appearance of the premises.

8.3.17. Class 21(a)(iii) provides for the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery. The pump installations indicated at Nos. 6 and 15 on Drg. No. 20-056-P-02-00 are in my opinion such that they would come within this sub class and would meet the above referenced conditions and limitations.

8.3.18. I note that the assessment undertaken by the Planning Authority and the report of the planning officer on file states that Parts a(ii) and a(iii) of Class 21 are not considered applicable on the basis that the works relate to areas of the site not currently used for an industrial purpose and the works therefore fall outside the conditions and limitations for Class 21. I do not agree with this assessment on the basis that the entirety of the site as outlined in red on the map submitted with the application is the subject of permissions for various forms of industrial activity. While ‘premises’ is not defined in either s.2 of the Planning and development Act, 2000 (as

amended) or Art. 3 of the Planning and Development Regulations, 2001 (as amended), I consider that the area of the site where the works the subject of this referral have been or are proposed to be undertaken are within a premises for the purposes of Class 21 and that the relevant areas are occupied by an industrial undertaker and used for the purposes of an industrial undertaking.

- 8.3.19. With regard to the closure of the existing water discharge from the site, I consider that this alteration comes within Class 21(a)(ii) relating to the provision, rearrangement, replacement or maintenance of sewers or pipes. The closure of this water discharge point would have potential implications under the heading of appropriate assessment, and these are considered at 8.3 below under the heading of Restrictions on Exempted Development and at 8.4 under the heading of Appropriate Assessment – Screening.
- 8.3.20. With regard to the constructed silt ponds, I do not consider that any part of Class 21 relates to this form of development. Specifically, neither Part (a)(ii) relating to the replacement of sewers, pipes cables or other apparatus nor Part (a)(iii) relating to the installation of plant or machinery or related structures are relevant to the form of development undertaken in the creation of these silt ponds / lagoons.
- 8.3.21. I have reviewed the other classes of exemption provided for in the second schedule of the Planning and Development Regulations, 2001 (as amended) and I do not consider that any other class in Parts 1 to 4 of this schedule is applicable to this case.

8.4. Restrictions on exempted development

- 8.4.1. Article 9 of the Planning and Development Regulations sets out a number of circumstances where the exemptions provided for under Article 6 and set out in the Second Schedule shall not apply. In the context of the site and nature of development the subject of this referral, I consider that the following sub sections of Article 9(1)(a) are of relevance:

8.4.2. (i) - Contravene a condition attached to a permission.

Condition No.3 attached to Refs. PL11.239204, PL11.239205 and PL11.239206 as well as condition No.2 attached to Ref. 218941 require that water supply and drainage arrangements including surface water shall comply with the requirements of the planning authority. These permissions relate to surface water in connection with process buildings on the site rather than the washing plant connected with the sand and gravel extraction process and I do not consider that it can reasonably be held that the alterations to the process water from the washing plant which form the main part of the subject referral would contravene these conditions.

Permission for the extraction of sand and gravel and the development of the concrete plant and washing plant was granted permission under Laois County Council Ref. 95/300 and contravention of this permission as it relates to the disposal of water from the washing plant could arise. Details of the Planning Authority decision on this case are not referred to or available on file and is not available on the council website. It is noted that the assessment undertaken by the Planning Authority does not make any reference to the works the subject of this referral contravening conditions attached to any permissions granted. On the basis of the information available it is therefore not considered that the works the subject of this referral would contravene a condition attached to any existing grant of permission.

8.4.3. (iii) - Endanger public safety by reason of a traffic hazard.

There is no indication from the information on file that the development undertaken could or has resulted in increased output at the facility such as would lead to an increase in traffic or potential implications for traffic safety.

8.4.4. (vi, vii and viiA) - Impact on Landscape or Archaeological features.

The nature of the works undertaken and proposed to be undertaken and which are the subject of this referral request and the location of the site is such that there would be no negative impact on the character of the landscape, views or prospects or archaeological features or monuments.

8.4.5. (viiB) - Development requiring appropriate assessment.

Section 8.4 below contains a screening for appropriate assessment. This screening concludes that the works the subject of this referral are such that they would not be likely to have significant effects on any European sites and that a Stage 2 Appropriate Assessment is not therefore required.

8.4.6. (viiC) - Development that would be likely to have an adverse effect on any area designated as a NHA.

The referral site is not located within or close to any NHA sites. The closest such sites to the referral site are the River Nore/Abbeyleix Woods Complex site (site code 002076) which is located c.1.5km to the south west of the referral site at the closest point and Lisbigney Bog (site code 000869) located c.2.5km to the south of the site at the closest point. There are no clear direct surface water connections between the referral site and the Lisbigney Bog site and in the case of the River Nore / Abbeyleix Complex site surface watercourses that adjoining the referral site to the east and west connect with the Owenbeg in excess of 4km to the south of the site and from there to the River Nore within the NHA a further 3.5km to the south. The nature of the works the subject of this referral comprising the re circulation and reuse of surface waters within the site are such that no off site surface water discharges are considered likely. In this regard an assessment of the surface water capacity of the lagoons and ponds on the site has been undertaken which indicates that they are capable of accommodating significant rainfall events. Some net discharge of surface waters from the site over time will have to occur and it is assumed that this is in the

form of seepage to groundwater. In view of the above it is not considered likely that the works the subject of this referral would have an adverse effect on any NHA site.

- 8.4.7. (viii) - consist of the extension, alteration, repair, or renewal of an unauthorised structure.

There is no indication from the planning history of the site and the activities set out in the application documentation and observed on site that any aspect of the existing development on the site which have or are proposed to be altered and which are the subject of the subject referral are unauthorised. There is no reference on the case file, including in the report of the planning officer and summary of the planning history to any enforcement action in relation to the site.

8.5. **Appropriate Assessment – Screening**

- 8.5.1. The site is not located in or close to an European sites. The closest such site to the site the subject of this referral are as follows:

- Lisbigney Bog SAC (site code 000869) which is located c.2.5km to the south of the site at the closest point.
- The River Barrow and River Nore SAC (site code 002162) which is located c.2km to the south west of the subject site at the closest point,
- The River Nore SPA (site code 004233) which is also located c.2km to the south west of the subject site at the closest point.

- 8.5.2. There is no clear surface water pathway between the referral site and Lisbigney Bog SAC. A surface water pathway between the referral site and the River Barrow and River Nore SAC and the River Nore SPA is available via the watercourses that run to the east and to the immediate south west of the referral site and into which the previously licenced water discharge point connected. This hydrological connection between this previous discharge point and the River Barrow and River Nore SAC and the River Nore SPA sites is c.8km in length. The hydrological connection via the watercourse to the east is c.4km in length.

- 8.5.3. Notwithstanding the above, the nature of the works which are the subject of this referral are such that the discharge of surface water from the pond / lagoon on the north western side of the site has now ceased and has been replaced with an internal circulation of water from the on site washing plant to two newly constructed ponds / lagoons. The layout the subject of the referral will therefore result in the cessation of the previous discharge of water from the site and no element of the proposal would result in any new discharges to surface waters or other emissions from the activity on the site which could impact on any European sites.
- 8.5.4. Some net discharge of surface waters from the site over time will have to occur and it is assumed that this is in the form of seepage to groundwater. The nature of the waters stored in the surface water features the subject of this referral are not such that they would have any effects on groundwater quality that could have likely significant effects on Lisbigney Bog which despite being called a bog is a wetland area located in a former lake basin and characterised by fen vegetation.
- 8.5.5. Having regard to the above, the works which are the subject of this referral are not likely to have significant effects on any of the above listed European sites in light of their conservation objectives.

8.6. Environmental Impact Assessment

- 8.6.1. Section 5(7A) of the Planning and Development Act as amended requires that the planning authority or the Board shall, in the respect of a development or proposed development specified in Part 2 of the Fifth Schedule to the Planning and Development Regulations, 2001 specify in its declaration or decision whether the development or proposed development the subject of the request or referral would be likely to have significant effects on the environment and require environmental impact assessment.
- 8.6.2. In the case of this referral, the elements the subject of assessment relate to drainage works connected with the use of the site as an industrial premises for the manufacture of pre cast concrete products. The nature of the works the subject of this referral and the primary industrial activity on the site are not therefore such that they are a class of development specified in Part 2 of the Fifth Schedule of the Planning and Development Regulations, 2001 (as amended) and I do not therefore

consider than an assessment of the likely significant effects on the environment is required in this case.

9.0 Recommendation

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

WHEREAS a question has arisen as to whether revisions to the on site management of surface water within an existing facility for the manufacture of concrete products as detailed on Drg. No. 20-056-P-02-00 including the creation of new surface water / silt ponds, re circulation of surface water on site and the cessation of surface water discharge to adjoining watercourse is or is not development and is or is not exempted development.

AND WHEREAS Booth Precast Limited requested a declaration on this question from Laois County Council and the Council issued a declaration on the 1st day of February , 2021 stating that the matter was development and was not exempted development:

AND WHEREAS Booth Precast Limited referred this declaration for review to An Bord Pleanála on the 26th day of February, 2021:

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(1)(h) 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 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) That the referral includes elements such as the excavation of new ponds, connecting pipes and pump equipment / pump house which comprise works and therefore comes within the scope of the definition of development as set out at s.3 of the Planning and Development Act as amended.
- (b) That the nature of the works the subject of this referral are such that they do not all relate to a 'structure' as defined in s.3 of the Act and are therefore such that the exemption provided for under s.4(1)(h) of the Act is not applicable. Specifically, it is considered that the excavation of Silt Pond / Lagoon (Nos. 1 and 2 on Drg. No. 20-056-P-02-00) the installation of new pipework and the construction of the new pump equipment and pump house (identified as No.15 on Drg. No. 20-056-P-02-00) are not existing structures and that the exemption provided for under s.4(1)(h) for the carrying out of works to such existing structures is not therefore applicable to these features. Works to the existing pumping arrangement and the construction of a new pumping house (No.6) and installation of new equipment and the closure of the existing surface water discharge from the site are works to existing structures and are therefore exempted development under s.4(1)(h),

- (c) that the referrer comes within the definition of a statutory undertaker as defined in Article 3 of the *Planning and Development Regulations, 2001* (as amended) and that the activity undertaken on the site is an industrial undertaking.
- (d) That the laying of new pipes connecting the pumping station to the new ponds and connecting the new ponds to each other are considered to constitute the laying of pipes or other apparatus that are consistent with Class 21 (a)(ii) of the *Planning and Development Regulations, 2001* (as amended) and that the conditions and limitations on this class are met as they relate to these works, .
- (e) That the pump installations indicated at Nos. 6 and 15 on Drg. No. 20-056-P-02-00 are such that they would come within Class 21(a)(iii) comprising the installation of additional plant or machinery, and that the conditions and limitations on this class are met as they relate to these works, . .
- (f) That the closure of the existing water discharge from the site comes within Class 21(a)(ii) relating to the provision, rearrangement, replacement or maintenance of sewers or pipes and that the conditions and limitations on this class are met as they relate to these works,
- (g) That the constructed silt ponds do not come within the scope of Class 21.
- (h) That none of the restrictions on exemptions set out in Article 9 of the *Planning and Development Regulations, 2001* (as amended) are applicable to the circumstances of this case,
- (i) That the works which are the subject of this referral are not considered such as to have any likely significant effects on any European sites in light of the conservation objectives of the relevant sites.

- (j) That the works which are the subject of this referral are not likely to have significant effects on any European sites.

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 revisions to the on site management of surface water within an existing facility for the manufacture of concrete products as detailed on Drg. No. 20-056-P-02-00 including the creation of new surface water / silt ponds, re circulation of surface water on site and the cessation of surface water discharge to adjoining watercourse is development and is not exempted development.

Stephen Kay
Planning Inspector

11th November, 2021