



An  
Bord  
Pleanála

## Inspector's Report ABP-311257-21

---

<b>Development</b>	Reclamation of land for agricultural use and entrance
<b>Location</b>	Gortanimill, Reananerree, Macroom, County Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	21/5618
<b>Applicant(s)</b>	Colette Buttimer
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Colette Buttimer
<b>Date of Site Inspection</b>	30 <sup>th</sup> November, 2021
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

- 1.1. The 1.083 hectare site is located in a remote rural area approximately 15km west of Macroom in County Cork. The site is on the eastern and southern side of a junction of two minor local roads. It comprises a low-lying field that is in grassland. A conifer forest is located to the east of the site. There is a drainage channel along the southern side of the site. The site's roadside boundaries comprise stone and earthen banks and some hedgerow along the north-eastern roadside boundary.

## **2.0 Proposed Development**

- 2.1. The proposed development would comprise the reclamation of land for agricultural use by filling a low-lying area with imported fill and the provision of a new agricultural entrance to facilitate the reclamation. It is proposed to import 21,055 tonnes of fill material consisting of topsoil, subsoil and an element of organic material, broken rock and broken concrete. The filling is intended to take place over a five-year period but may be over a shorter period depending on the acquisition of fill. The fill would be to an average depth of 1.2 metres. Approximately 18 linear metres of hedgerow and stone and earthen bank would be removed to provide the entrance and associated sightlines.
- 2.2. Details submitted with the application included an Ecological Impact Assessment Report, an AA Screening Report, and an Agricultural Report.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 4<sup>th</sup> August, 2021, Cork County Council decided to refuse permission for the proposed development for one reason relating to the negative effect on an area of biodiversity value contrary to development plan policy.

### **3.2. Planning Authority Reports**

- 3.2.1. Planning Reports

The Planner noted the reports received. It was considered the proposal would not have any impact on residential amenity and the visual impact would be negligible. A refusal of permission was recommended in light of the Ecologist's report.

The Senior Executive Planner and the Senior Planner concurred with the Planner's recommendation.

### 3.2.2. Other Technical Reports

The Area Engineer recommended a grant of permission subject to the attachment of conditions.

The Ecologist noted a refusal of permission for a similar application for reclamation to the west of the site (P.A. Ref. 18/5453) on the basis of ecological habitats occurring on the site. The conclusions of the applicant's Habitats Directive Screening Report were accepted. It was considered that the applicant's EclA provided an accurate classification of the habitats on the site. It was submitted that the site still holds species which conform to wet heath habitat and is part of a larger wetland complex extending over approximately 15 hectares which has been degraded by agricultural practices. It was considered the ecological value of the site was underestimated and is of at least local importance high value. It was submitted that, during a site visit, a wide variety of species were recorded, including those of conservation concern, indicating the habitats on the site are still of ecological value. It was concluded that the proposed infilling would result in a permanent loss of high valued natural habitat and that the proposal would be contrary to Objective HE 2-3 of Cork County Development Plan. A refusal of permission was recommended.

The Environment Report recommended that further information be sought on fill, waste storage, buffer zones, and a facility closure plan.

### 3.3. Prescribed Bodies

Inland Fisheries Ireland requested that details be agreed with the applicant on control of soiled water, that only inert materials be used, that a 5m buffer zone be maintained for watercourses, and that a condition be attached so that there would be no interference with, bridging, draining or culverting of the adjoining stream or any

watercourse. It was also suggested that the 100-year flood plain contour be established and no lands below that contour be filled.

## 4.0 Planning History

I have no record of any planning application or appeal relating to the site.

## 5.0 Policy Context

### 5.1. Cork County Development Plan

#### Biodiversity outside Protected Areas

The relevant objective of the Plan is Objective HE 2-3 as follows:

*Retain areas of local biodiversity value, ecological corridors and habitats that are features of the County's ecological network, and to protect these from inappropriate development. This includes rivers, lakes, streams and ponds, peatland and other wetland habitats, woodlands, hedgerows, tree lines, veteran trees, natural and seminatural grasslands as well as coastal and marine habitats...*

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

- The decision was based on ecological grounds and was unfair.
- The EclA supporting the application had different views from that of the planning authority.
- The Council's Environment Directorate made a few comments that could be addressed and the Area Engineer's report recommended a grant subject to conditions.

The appeal includes the following:

- A letter of support from the agent who prepared the EclA refers to the site supporting relatively species poor wet grassland with elements of wet heath in

small pockets. This also refers to a 5m buffer being provided at the drainage channel on the southern boundary where Common Frog would be retained. Reference was also made to a proposed development of a similar nature to the west which was refused permission. The letter concluded by referring to the site as one which supports small areas of semi-natural habitat and is, therefore, of local importance for wildlife.

- A letter from the appellant outlines the reason for the infilling and refers to facilitating several large scale construction projects in the area with the proposed fill site.
- A letter from the appellant's agri-services agent refers to the site being lightly grazed by cattle, to the land being prone to damage due to the poor quality soil, and to the benefit that would accrue from improving the site.

## 6.2. Planning Authority Response

The planning authority submitted that all relevant issues were covered in its technical reports and there was no further comment to make.

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. I consider that the principal planning issues relate to the deficiencies in information, the traffic impact, the need for Environmental Impact Assessment, and the impact of the development on ecology. I will also refer to appropriate assessment.

### 7.2. Deficiencies in Information

- 7.2.1. The proposed development would comprise the importation of topsoil, subsoil and an element of organic material, broken rock and broken concrete to raise the level of the existing field in order to improve the agricultural output of this field. The area of the field is 1.083 hectares and it is estimated that approximately 21,055 tonnes of materials would be imported onto the site and would raise the level of the land on

average by a depth of 1.2 metres. I note that the site and adjoining lands have no known status as an area of particular conservation value. I accept that the site at present is of very marginal agricultural value and in its present state would have limited use for grazing.

7.2.2 I am concerned about the limited information on the nature and extent of the proposed development. 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 21,0055 tonnes of materials constitutes a sustainable development:

- 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, ponding and leachate management
- Comprehensive Invasive species management

7.2.3. While I note reference to some of these issues in the appellant's Ecological Impact Assessment and Agricultural Report, I acknowledge the limited nature of the details provided and measures that are set out. Having regard to the scale of the proposed filling operation, I consider that plans and further details on specific measures are necessary.

7.2.4. Further to my own considerations on deficiencies of information, I also acknowledge the Environment Section's request for further information which raises a number of other issues including restrictions on the types of fill material, detailed mapping,

protection of buffer zones, and a closure plan. These add further to the concern about the limited detail in the application.

7.2.5. It is my submission to the Board that without detailed information on what is actually proposed one cannot reasonably decide on whether the proposal constitutes sustainable development. Drainage provisions for the wetland, containment of the site, transportation, the nature of the materials, etc. each require information which provides a thorough understanding of the proposal. It is my submission to the Board that the application is substantially deficient to allow for a reasonable determination to be made on the sustainability of the proposed development.

### 7.3. Traffic Impact

7.3.1. I submit to the Board that a critical issue relating to the proposed development is the traffic impact. I must impress upon the Board the remote upland nature of the site. This is an issue that is particularly deficient in information. I acknowledge that there is a wind farm development further south-west of this location and, therefore, it is anticipated that the local road network has been used for construction traffic and for deliveries of materials. Accessing the site of the proposed development requires the utilisation of minor local roads that are poor in width, structure and alignment for extensive lengths. The scale of the proposed development demands a greater understanding of where the proposed fill material is to derive from, the intended routes to be used, some understanding of the volume and types of trucks expected to deliver fill, the timeframe over which it is to occur, etc. The filling of the site would have some degree of community impact arising from the truck deliveries and detailed information is required in order that such an impact can be assessed.

### 7.4. The Need for Environmental Impact Assessment

7.4.1 I first note that the applicant's covering letter with the application to the planning authority set out the contents of the application and therein an EIA screening report was referenced. What was submitted was an Appropriate Assessment screening report. I further note that the planning authority's reporting has not clarified if a waste permit would or would not 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 may require a permit for waste as it may 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 tonnes 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 20,055 tonnes 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 the filling is intended to take place over a five-year period, I also note that it is submitted that it may be over a shorter period depending on the acquisition of fill.

7.4.4 Notwithstanding the sub-threshold nature of the proposed development, I submit that, having regard to the above, it is somewhat problematic to immediately screen out the need for EIA for the proposed development.

7.4.5 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 reasonably be ascertained. Thus, a reasonable determination on the environmental impact and the sustainability of the development cannot be attained at this stage.



## 7.5. Impact on Ecology

7.5.1. The site of the proposed development comprises a field of marginal agricultural value. It is poorly drained and is extensively bounded by evergreen forestry and by drainage ditches. It is generally clear of scrub, gorse and other such vegetation. There is extensive soft rush, wet grassland and wet heath throughout, the latter being a habitat of some conservation value. The north-eastern section presents as being the drier part of the field. The lands are bounded to the west and south-west by similar lands of marginal agricultural value. The habitats on the site are adequately described in Section 3.2.1 of the applicant's Ecological Impact Assessment (EclA). This field is not designated as being of conservation value.

7.5.2. I note the provisions of Cork County Development Plan and, in particular, the provisions relating to biodiversity. Objective HE 2-3 of the Plan is follows:

*Retain areas of local biodiversity value, ecological corridors and habitats that are features of the County's ecological network, and to protect these from inappropriate development. This includes rivers, lakes, streams and ponds, peatland and other wetland habitats, woodlands, hedgerows, tree lines, veteran trees, natural and seminatural grasslands as well as coastal and marine habitats...*

Thus, the Plan seeks to protect areas of local biodiversity value.

7.5.3. Having regard to the nature of the proposed development, it is evident that the filling of this field with topsoil, subsoil, organic material, broken rock and broken concrete would completely alter the established natural habitats and would ultimately result in their loss, inclusive of the wet heath.

7.5.4. I acknowledge the planning authority's concerns. The planning authority's Ecologist has noted that the site holds species which conforms to wet heath habitat, albeit degraded. It is recognised that the site forms part of a larger wetland complex extending over some 15 hectares that has been degraded in recent years by agricultural practices. Notwithstanding the damage that has occurred, it is considered that the ecological value of the site has been underestimated and it is concluded that the site should be considered to be of at least 'local importance high

value'. I further acknowledge the findings of the site visit by the Ecologist where a wide variety of species was recorded and an array of birds were observed, including two of conservation concern in Ireland. It is, therefore, reasonable to determine that these findings indicate that the habitats of this site remain as being of some ecological value. Clearly, the proposed development would undermine this ecological value and there would be a permanent loss of the valued habitats if the lands were to be developed for more intensive grazing purposes.

- 7.5.5. Further to the above, I acknowledge the findings of the appellant's EclA followed by the appeal submission by the applicant's Ecologist. The existence of wet heath habitat, albeit in small pockets within the site, is accepted. Potential habitat for Common Frog is acknowledged and it is considered that the site supports small areas of semi-natural habitat which is of local importance for wildlife. It is evident that the proposed filling of the field would permanently alter the natural habitat value.
- 7.5.6. I must acknowledge that this is a location undergoing significant change and alteration to existing natural habitats, with extensive evergreen forestry plantations and wind farm development being examples of such change. The necessity to seek to retain the biodiversity value of wet heath becomes all the more important in my opinion in such circumstances. Facilitating the filling of this site will further erode the biodiversity value of the lands and will incentivise more intensive grazing. A further concern is that this site abuts extensive lands of a similar nature to the south and south-west. I have no doubt that allowing the proposed development would likely be used as a precedent for further development of a similar nature on other lands in this area, resulting in yet further erosion of the natural habitat value of this area.
- 7.5.7. Overall, I am satisfied to concur with the findings of the planning authority. I cannot reasonably determine that the proposed development sits comfortably with Objective HE 2-3 of Cork County Development Plan.

## 7.6. Appropriate Assessment Screening

### 7.6.1. *Background*

The applicant has submitted an Appropriate Assessment Screening as part of the application to the planning authority. This Stage 1 AA Screening Report was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development. The applicant's AA Screening Report concluded as follows:

*“Through an assessment of the source-pathway-receptor model, which considered the Zol of effects from the proposed development and the potential in-combination effects with other plans or projects, the following findings were reported:*

- The proposed Agricultural Improvement, Gortanimill, Reananarree, County Cork, either alone or in-combination with other plans and/or projects, does not have the potential to significantly affect any European Site, in light of their conservation objectives. Therefore, a Stage 2 Appropriate Assessment is deemed not to be required.”*

Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone or in combination with other plans and projects, on European sites.

### 7.6.2. *Description of Development*

The applicant provides a description of the project in Section 3 of the AA Screening Report. In summary, the development comprises the agricultural improvement of an existing field by filling low lying areas with improved fill. A maximum of 21,055 tonnes or a volume of 14,037m<sup>3</sup> would be imported. The material would consist of topsoil, subsoil, organic material, broken rock and broken concrete.

### 7.6.3. *European Sites*

A summary of European sites that occur within 15km of the site for the proposed development is presented in Section 3.2 of the applicant's AA Screening Report.

The following are the European sites within 15km of the site:

<b>Special Areas of Conservation</b>	<b>Distance to Site</b>
St. Gobnet's Wood SAC	c. 3.4km
Mullaghanish Bog SAC	c. 7.9km
The Gearagh SAC	c. 9.0km
Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC	c. 13.4km
Blackwater River (Cork/Waterford) SAC	c. 14.5km

  

<b>Special Protection Areas</b>	<b>Location</b>
Mullaghanish to Musheramore Mountains SPA	c. 3.9km
The Gearagh SPA	c. 9.3km

Table 3-3 of the applicant's AA Screening Report identifies the relevant European sites, their Qualifying Interests, their distance from the site of the proposed development, and their connectivity with the site.

### 7.6.4. *Identification of Likely Effects*

#### **General Observations**

- The proposed development is not connected with or necessary for the conservation management of any Natura 2000 site.

- The site of the proposed development is not located in or in the vicinity of any European site.
- The site of the proposed development is not known to have habitat to support any of the Special Conservation Interests of any Special Protection Area within 15km of the site.

The following is then noted from the applicant's screening report:

- There is no hydrological connectivity between the site and St. Gobnet's Wood SAC and The Gearagh SAC. Groundwater at the site would not flow in the direction of these SACs.
- There is no connectivity between the site and Mullaghanish Bog SAC, Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC, and Blackwater River (Cork/Waterford) SAC.
- There is no connectivity between the site and Mullaghanish to Musheramore Mountains SPA.
- There is no hydrological connectivity between the site and The Gearagh SPA. Groundwater at the site would not flow in the direction of this SPA.

I note that these findings have been accepted by the planning authority's Ecologist.

Having regard to the above, it can reasonably be determined that the proposed development would not have any direct or indirect effects on the qualifying interests of the referenced European sites.

#### *7.6.5. In-combination Effects*

I note the other plans and projects that were considered by the applicant in Section 4.2.1 of the submitted AA screening report. These are considered to be the relevant plans and projects for assessment. There are no other known developments required for consideration of in-combination effects. As the proposed development is one which would have no direct or indirect effects on any European sites, it is reasonable to determine that the proposed development could not act cumulatively

with other plans and projects such that there would be potential in-combination effects.

#### 7.6.6. *Mitigation Measures*

No measures designed or intended to avoid or reduce any harmful effects of the proposed alterations on a European site have been relied upon in this screening exercise.

#### 7.6.7. *Screening Determination*

The proposed development has been considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European site, in view of their Conservation Objectives, and Appropriate Assessment is not therefore required.

This determination is based on the following:

- There are no known pathways between the site areas associated with the proposed development and any European site, and
- The site for the proposed development does not have habitat to support the Special Conservation Interests of the Special Protection Areas within 15km of the proposed development.

## 8.0 **Recommendation**

- 8.1. I recommend that permission should be refused because of the impact of the proposed development on the biodiversity of the area in which the site is located, which would be contrary to the provisions of Cork County Development Plan and Objective HE 2-3 in particular. In the event that the Board does not concur with this

recommendation, I recommend that further information be requested to address the deficiencies in information in order to allow for an adequate assessment of the likely planning and environmental impacts arising from the proposed development. The issues requiring further detail are set out in my assessment above and I recommend that due consideration should also be given to the recommendation of the Environment Section when it reported to the planning authority.

## 9.0 **Reasons and Considerations**

It is an objective of Cork County Development Plan to retain areas of local biodiversity value, ecological corridors and habitats that are features of the County's ecological network, inclusive of natural and seminatural grasslands, and to protect these from inappropriate development (Objective HE 2-3). Having regard to the wet heath habitat within the site and the range of habitats which support a diverse range of species of ecological value and to the ongoing degradation and damage to such habitats at this location, it is considered that the proposed development would result in the loss of habitat of ecological value, it would have a significant negative effect on the biodiversity of the area, and it would, thereby, conflict with Objective HE 2-3 of the County Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

---

Kevin Moore  
Senior Planning Inspector

9<sup>th</sup> December 2021