



An
Bord
Pleanála

Inspector's Report ABP 311269-21

Development	Importation of inert material for land reclamation for agricultural purposes.
Location	Shronederragh, Barraduff, Killarney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/1107
Applicant	John Joe Murphy
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellant	Michael J. Horgan
Observer(s)	None
Date of Site Inspection	24/11/21
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

Barraduff village is located on the N72, Mallow to Killarney road, approx. 10km to the east of Killarney town. The N72 intersects with the R570 at the eastern end of the village. The main commercial core of the village is located along the N72 with shops, offices, commercial units, community facilities on both sides (north and South) of the main road. Large tracts of land to the south of the main street properties, have recently been developed for housing in the form of residential estates, predominantly on the western side of the R570.

The site which has a stated area of 0.74 hectares, is located to the west and outside of the 60kph speed limit of the village. It is rectangular in shape with hedgerows delineating its boundaries. It is lower than the road with drains noted along the northern and eastern boundaries. Vegetation on site indicates poor drainage. The field is served by an existing access in the north-western most corner.

The N72 in the vicinity of the site does not have the benefit of hard shoulders and is governed by a solid white line. Sight distances to the west were noted to be good but were constrained to the east due to the road's horizontal alignment.

2.0 Proposed Development

The application was lodged with the planning authority on the **16/11/20** with further details submitted **16/03/21** and **15/06/21** following further information and clarification of further information requests dated 18/01/21 and 25/05/21 respectively. Revised public notices were submitted 06/04/21.

The proposal entails the importation of c.11.400 m³ (17,100 tonnes) of inert material comprising of 86% soil and stones and 14% topsoil. The material is to be imported from a construction site 300 metres away. It is so as to allow for the raising of the lands for agricultural use. The average depth of fill will be 1.5 metres over the existing ground levels. The period of importation is expected to be no greater than 1 year with the facility only open when the need arises.

A temporary hardstanding is proposed at the existing field entrance to allow vehicular manoeuvres.

The application is accompanied by:

- Environmental Section Booklet (as amended by way of further information)
- Traffic Safety Booklet (submitted by way of further information)
- Natura Impact Statement (submitted by way of further information)
- Environmental Impact Assessment Screening Report (submitted by way of clarification of further information).

A waste facility permit will be required.

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 5 conditions including:

Condition 3: (b) maximum quantity of waste accepted annually not to exceed 5000 tonnes.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st report (undated) recommends further information seeking an NIS, EIA Screening and details on operational issues, traffic movements and sight lines.

The 2nd report (undated) notes the Biodiversity Officer's comments following further information response and recommends clarification of further information.

The 3rd report dated 09/08/21 (countersigned) considers the principle of the development to be acceptable. It is not possible to completely avoid a visual impact of such a proposal but, given the location of the site, the nature of adjoining development and the proximity of the site to the adjoining public roadway to the north, the proposal is considered acceptable. A grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

Environment Section in a report dated 06/08/21 has no objection subject to conditions including the maximum amount of waste to be accepted annually not to exceed 5000 tonnes.

The 1st report from the Biodiversity Officer dated 15/01/21 considers there is no information provided with the application on the possibility of the development to significantly affect a European Site. An NIS is required. Sub threshold development for EIA may be applicable. The 2nd report dated 21/05/21 notes that an EIA Screening Report was not submitted. The drain along the eastern boundary should be left unaltered. Clarification of further information recommended. The 3rd report dated 22/06/21 concludes that the site is of low ecological value. The drainage ditches surrounding the site can be protected during construction and operational phases. Mitigation outlined in the NIS should be conditioned.

The 1st report from Area Engineer dated 15/01/21 recommends further information on sight lines. The 2nd report dated 05/08/21 has no objection subject to conditions.

3.3. Prescribed Bodies

Transport Infrastructure Ireland in letters dated 16/12/20 and 22/03/21 has no observations to make on the application.

Environmental Health Officer, HSE in a report dated 08/04/21 recommends all measures to be implemented to control all waste, water pollution, public health nuisance etc. and procedure for complaints.

3.4. Third Party Observations

An objection to the proposal received by the planning authority is on file for the Board's information. The issues raised are comparable to those set out in the grounds of appeal summarised in section 6 below.

4.0 Planning History

I am not aware of any previous planning applications on the site.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015-2021

The site is located in an area zoned 'Rural General'.

Relevant policies and standards of the Kerry County Development Plan 2015-2021 include:

- Section 4.8.1 relates to Agriculture, which it is stated is the second largest employer in the County. It is an objective of the Council to support the sustainable development and diversification of the agricultural sector.
- Section 7.4 relates to Waste Management. The Council seeks to ensure the provision of the highest standards of waste management and to prevent and control water, air and noise pollution.

5.2. Natural Heritage Designations

The site is c.800 metres to the west of the Owenkeagh River which forms part of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC.

6.0 The Appeal

6.1. Grounds of Appeal

The submission by Michael Horgan can be summarised as follows:

- Vehicular movements arising from the works and the carbon emissions arising.
- Financial contribution to be paid is not satisfactory.
- Surveillance of the material to be disposed of on the site and inspection on completion.
- Impact on biodiversity.

6.2. Applicant Response

None

6.3. Planning Authority Response

The issues raised have been addressed in the Planner's and Environment Section's reports.

6.4. Observations

None

7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

- Principle of Development
- Access and Traffic
- Other Issues
- EIA Screening
- Appropriate Assessment

7.1. Principle of Development

7.1.1. The proposed development involves the importation of c. 17,100 tonnes of inert topsoil, subsoil and stone to the site for the purposes of land reclamation. The materials are to be sourced from one site, only, on which a residential scheme is to be constructed c.300 metres to the south-east, with the works to be no longer than 1 year in duration. The lands are to be filled to a height of 1.5m. and, on completion, are to be used for agricultural purposes.

7.1.2. Apart from general policies encouraging re-use and recycling and appropriate treatment, the Waste Management Plan for the Southern Region lacks specific policies of relevance to the type of development proposed. The Kerry County Council 2015-2021 County Development Plan has a number of waste specific objectives

(Chapter 7), although none relate specifically to this type of inert landfill. In general terms the Council seeks to ensure the provision of the highest standards of waste management and to prevent and control water, air and noise pollution. I also note that Section 4.8.1 of the Plan recognises the importance of agriculture as a component of County Kerry's economy.

- 7.1.3. On the basis of the stated policies and objectives, the proposed development description and my inspection, I am satisfied that the development will provide a benefit to the land, would not be contrary to any policies or objectives of the current Kerry County Development Plan and is acceptable in principle.
- 7.1.4. The type of waste and the quantity proposed to be disposed of on the site would be class 5/class 6 and subject to the Waste Management (Facility Permit and Registration) Regulations 2007 as amended.

7.2. Access and Traffic

- 7.2.1. The site which has a stated area of 0.74 hectares is c. 200 metres outside the speed limit of Barraduff village, accessed from N72 Killarney-Mallow National Secondary Road. Thus the 100km speed limit applies. The road was noted to be well trafficked with vehicles gaining speed on exiting the village travelling westwards towards Killarney. The road in the immediate vicinity of the site does not have the benefit of hard shoulders with overtaking precluded by reason of the central, solid white line.
- 7.2.2. The proposed development entails the importation of inert material from a nearby site under construction for housing so as to allow for the raising of the 0.74 hectare site and its use for agricultural purposes. 17,100 tonnes (11,400 m³) of material is proposed to be imported over a one year period from one site, only, located approx.300 metres to the south-east and which has permission for a residential scheme. The delivery route between the two sites is 1.3km along the R570 and N72. No detail is provided as to the number of vehicular movements anticipated to carry out the works. Working on the assumption of a 3 axle rigid HGV with an average 25 tonne capacity and a 52 week operating period, approx. 9 movements (one way) per week would arise.
- 7.2.3. The existing field entrance is to be used with a turning area to be provided to allow for vehicular movements. 215 metre sight lines in both directions can be achieved

subject to the setting back of the roadside boundaries on adjoining lands, with the consent from the relevant landowners to carry out the works accompanying the application. The applicant owns and operates a road sweeper which would be used to keep the roads clean with advance signage warning of construction traffic entering/exiting the site proposed.

- 7.2.4. Transport Infrastructure Ireland was notified of both the application and the response to the further information. It had no observations to make. I note that the Area Engineer in his response following the further information had no objection to the proposal subject to conditions.
- 7.2.5. On balance, I consider that the additional traffic which the development would generate on the national secondary road would not be significant and would be limited in duration. Subject to the mitigation measures as detailed above, I am satisfied that the proposed development would not create an unacceptable traffic hazard or unacceptable convenience to other road users.

7.3. **Other Issues**

- 7.3.1. Taking into consideration the source of the material from a construction site c.300 metres to the south-east which, itself, would generate vehicular movements from construction vehicles, I do not consider that the movements to and from the site which are limited in number and duration would give rise to a significant increase in carbon emissions.
- 7.3.2. The site is low lying and poorly drained and is not within an area designated as being of ecological sensitivity. Given the location of the site in an area characterised by similar lands and habitats and the mitigation measures to be incorporated including a buffer zone to the land drains, I consider that the impacts on the ecology of the site and the wider area would be acceptable. I refer the Board to the appropriate assessment in section 7.5 below.
- 7.3.3. The Kerry County Council Development Contribution Scheme 2017 as adopted sets out the applicable rates for landfill which is 0.29 euro per m³ volume of fill material. The planning authority is required to properly apply the scheme and has no discretion to increase the amount due. Condition 2 attached to the permission refers.

7.3.4. The issue of control of materials to be disposed of within the site is a matter for control and surveillance under the Waste Facility Permit which will be required for the site.

7.4. Environmental Impact Assessment

7.4.1. An Environmental Impact Assessment Screening report was submitted by way of clarification of further information and includes the information required under Schedule 7A of the Planning and Development Regulations, 2001, as amended.

7.4.2. The proposed development is for the reclamation of land with a stated area of 0.74 hectares for agricultural purposes. The reclamation will entail the importation of 17,100 tonnes of inert material from a nearby construction site over a period not exceeding one year.

7.4.3. The development subject of this application falls within the class of development described in 11(b) Part 2, Schedule 5 of the Planning and Development Regulations, 2001, as amended. EIA is mandatory for developments comprising of installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule. The proposed development falls materially short of this threshold.

7.4.4. The materials to be disposed of within the site comprise of inert subsoil, stone and topsoil from a nearby site which is being developed for residential purposes.

7.4.5. The proposed development is not significant in terms of size and design entailing a site of 0.74 hectares on the western approach to Barraduff village. The site is low lying and poorly drained. The works will allow for the beneficial use of the land for agricultural purposes.

7.4.6. The reclamation works will not result in any significant loss of natural resources or local biodiversity. The hedgerows and open drains are to be maintained. The lands in the vicinity are comparable in character in terms of being low lying and poorly drained.

7.4.7. Appropriate measures are to be incorporated including setback to the drains on site and installation of silt fences to protect against accidental spillage/pollution to surface water.

- 7.4.8. The site is not within or adjacent to any European Site. The issues arising from the proximity/connectivity to a European Site can be adequately dealt with under the Habitats Directive and the proposed mitigation measures included within the NIS are considered to adequately address any significant likely effects that would require to be addressed in an EIAR
- 7.4.9. The site is not within an area designated as being of visual sensitivity or of high amenity value. There are no archaeological or cultural heritage features within or in the vicinity of the site
- 7.4.10. Noise and vehicular movement would be comparable to that generated at other construction sites and would be temporary in duration.
- 7.4.11. There is no risk of major accidents or risks to human health.
- 7.4.12. The application is accompanied by a Traffic Safety Booklet. This addresses the issues arising in terms of site access and vehicular movement.
- 7.4.13. I submit that the location of the proposed development and the environmental sensitivity of the geographical area would not justify a conclusion that it would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects the impact of which would be rendered significant by its extent, magnitude, complexity, probability, duration, frequency, or reversibility. This conclusion is consistent with the information provided in the applicant's EIA Screening Report.

Therefore having regard to: -

- nature and scale of the proposed development, which is below the threshold in respect Class 11(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
- The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003),

- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),
- The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Natura Impact Statement

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.

7.5. **Appropriate Assessment**

Compliance with Articles 6(3) of the EU Habitats Directive

- 7.5.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 7.5.2. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and, therefore, is subject to the provisions of Article 6(3).
- 7.5.3. The application is accompanied by a Natura Impact Statement (NIS) prepared by Wetland Surveys Ireland Ltd. It contains a description of the proposed development, the project site and the surrounding area. It contains a Stage 1 Screening Assessment in Section 3. It outlines the methodology used for assessing potential impacts on the habitats and species within the European Sites that have the potential to be affected by the proposed development. It predicts the potential impacts for the sites and their conservation objectives, it suggests mitigation

measures, assesses in-combination effects with other plans and projects and it identifies any residual effects on the European sites and their conservation objectives.

- 7.5.4. 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.

Need for Stage 1 AA Screening

- 7.5.5. The project is not directly connected with or necessary to the management of a European Site and, therefore, it needs to be determined if the development is likely to have significant effects on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

Brief Description of the Development

- 7.5.6. The applicant provides a description of the project in Section 3 of the NIS. The development is also summarised in Section 2 of this Report. In summary the proposed development entails the importation of c.17,100 tonnes of inert materials and land reclamation for agricultural purposes. The inert material will consist of subsoil, stone and topsoil to be sourced from a site being developed for housing c.300 metres to the south-east. There will be no stripping of the existing top soil and the imported material will be filled on top of the existing land. The total fill will be 1.5 metres above current ground level. Once the inert material has been deposited it will be spread out. When the desired fill depth of stone and subsoil has been reached, topsoil will be spread and then reseeded.
- 7.5.7. The site comprises of a low lying field with wet grassland vegetation. The field boundaries are delineated by hedgerows with open drains running parallel to the northern (roadside) and eastern boundaries and along a small section of the southern boundary.

7.5.8. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Run off of silt, sediment and hydrocarbons during filling of land which could impact on downstream water quality.

Submissions and Observations

The 3rd Party appeal raises concerns regarding the impact of the proposal on biodiversity.

European Sites

The development site is not located in or immediately adjacent to a European site. In determining the extent of potential effects of the development the source-pathway-receptor model of impact was used.

- The site is c.800 metres to the west of the Owenkeagh River which forms part of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC. Taking into consideration the drainage ditches along field boundaries within the site and the hydrologic distance to the designated site there is the possibility that surface water runoff containing silt or contaminants could reach the SAC and have effects on the qualifying interests of the site. The potential for effects on the qualifying interests of this Natura 2000 site cannot, therefore, be screened out and Stage II Appropriate Assessment is required.
- Killarney National Park SPA is c.10 km (23.2km hydrologic distance) from the site. In view of the fact that the site does not support the conservation interests and the separation distance, the potential for significant impacts on the species can be screened out.
- Castlemaine Harbour SAC is c.11km (30 km hydrologic distance) from the site. In view of the separation distance and assimilative capacity of intervening watercourses significant impacts on the habitats and species for which the site is designated can be screened out.

Mitigation Measures

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

Screening Determination

The proposed development was 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) could have a significant effect on European Site no. 00365 in view of the site's Conservation Objectives and Appropriate Assessment (and submission of a NIS) is therefore required.

The Natura Impact Statement

- 7.5.9. The NIS examines and assesses potential adverse effects of the proposed development on 1 no. designated European Site.
- 7.5.10. The NIS is stated as having been informed by best practice guidance for such assessments, a desktop and literature study, including NPWS databases, the synopses, Natura 2000 Data Forms and conservation objectives and EPA mapping, and habitat and species surveys.
- 7.5.11. Section 4 of the NIS contains an assessment of the potential impacts of the proposed development on the identified European Site and in combination effects with Section 4.4 setting out a series of mitigation measures.
- 7.5.12. The NIS concluded that there will be no significant effects to the integrity of the designated sites.
- 7.5.13. Having reviewed the NIS, all supporting documentation and submissions, I am satisfied that the information allows for a complete assessment of any adverse effects of the proposed development on the conservation objectives of the abovementioned European sites alone, or in combination with other plans and projects.

Appropriate Assessment of Implications of the Proposed Development.

7.5.14. The following is an assessment of the implications of the project on the relevant conservation objectives of the European site using the best available scientific knowledge in the field (NIS). All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are examined and assessed. I have relied on the following guidance:

- DoEHLG (2009). Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service. Dublin
- EC (2002) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC.

Relevant European sites:

7.5.15. The site is c.800 metres to the west of the Owenkeagh River which forms part of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC.

7.5.16. A description of the site, its qualifying interests and conservation objectives including any relevant attributes and targets are set out in the NIS and are summarised in Table 1 below. I have also examined the Natura 2000 data form and the conservation objectives supporting documents for the site available through the NPWS website (www.npws.ie).

Aspects of the Proposed Development

7.5.17. The main aspects of the proposed development that could adversely affect the conservation objectives of the European site include the release of sediment and other pollutants to surface water during the raising of the lands as the site is hydrologically linked to the SAC via drainage ditches running along the northern and eastern site boundaries.

7.5.18. Section 8 of the NIS details mitigation measures to be employed. The mitigation measures include:

7.5.19. *Design:*

- Maintenance of a 5 metre buffer to the drain along the northern boundary and, by way of clarification of further information, a comparable buffer is to be retained to the drain along the eastern boundary.

7.5.20. *Construction Phase:*

- A silt trap comprising straw bales with clean drainage stone either side of the bales, will be located at the north-eastern corner of the site where the two drains meet.
- No refuelling of vehicles on site.

7.5.21. Table 1 below summarises the appropriate assessment and integrity test. The conservation objectives, targets and attributes as relevant and the identified potential adverse effects have been examined and assessed in relation to all aspects of the project (alone and in combination with other plans and projects). Mitigation measures proposed to avoid and reduce impacts to a non-significant level have been assessed. In terms of possible in-combination effects plans, programmes and existing and proposed developments were considered. I do not consider that there are any specific in-combination effects that arise from other plans or projects. Regard is had to the Kerry County Development Plan and planning applications in the vicinity.

7.5.22. This complete assessment allows for clear, precise and definitive conclusions to be reached in terms of adverse effects on the integrity of European sites.

7.5.23. Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC in view of the conservation objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

Appropriate Assessment Conclusion:

7.5.24. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.

- 7.5.25. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 00365). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of the site in light of its conservation objectives.
- 7.5.26. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site, or any other European site, in view of the site's Conservation Objectives.
- 7.5.27. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.
- 7.5.28. This conclusion is based on:
- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures.
 - No reasonable scientific doubt as to the absence of adverse effects on the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 00365).

Summary Table 1 – Killarney National Park, Macgillicuddy’s Reeks and Caragh River Catchment SAC

Key issues

- Water quality impacts due to pollutants or soil/silt run off during landfilling

Conservation Objectives: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000365.pdf

Summary of Appropriate Assessment

Conservation Objective To maintain (M) or Restore (R) the favourable conservation condition of the following:	Targets and attributes (summary-as relevant)	Potential adverse effects	Mitigation measures (including monitoring)	In-combination effects	Can adverse effects on integrity be excluded?
<p>Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) (R)</p> <p>Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea</p>	<p>These qualifying interest species and habitats are either outside of the range of any possible impact of the proposed or are not a freshwater habitat/species where no pathways exist and are not considered</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p> <p>Adverse effects on site integrity can be excluded as there is no doubt as to absence of effects on these qualifying interests in view of their conservation objectives All occur outside of any possible range of</p>

uniflorae and/or Isoeto-Nanojuncetea (R)	further in the assessment.				influence of the proposed development.
Juniperus communis formations on heaths or calcareous grasslands (M)	This was informed by reference to the distribution as detailed in best available scientific information from NPWS				
Alluvial forests with Alnus glutinosa and Fraxinus excelsior (R)					
Northern Atlantic wet heaths (R)					
European Dry Heaths (R)					
Alpine and Boreal Heaths (R)					
Calaminarian grasslands of the Violetalia calaminariae (M)					
Molinia meadows on calcareous, peaty or clayey-silt-laden soils (R)					

Blanket bogs (* if active bog) (R) Depressions on peat substrates of the Rhynchosporion (R) Old sessile oak woods with Ilex and Blechnum in the British Isles (R) Taxus baccata woods of the British Isles (R) Kerry Slug (M) Marsh Fritillary (R) Lesser Horseshoe Bat (M) Killarney Fern (M) Slender Naiad (M) Killarney Shad (R)					
Freshwater Pearl Mussel (R)	Populations exist within a separate sub-catchment and no pathways exist.	N/A	N/A	N/A	Yes Adverse effects on site integrity can be excluded as there is no doubt as to absence of

					effects on these qualifying interests in view of their conservation objectives All occur outside of any possible range of influence of the proposed development.
Sea Lamprey (M)	75% of mainstream length of rivers accessible from estuary, minimum 3 no. age/size groups present, juvenile density, no decline in extent and distribution of spawning site, number of positive sites in 3 rd order channels.	No direct Impacts. Indirect Impact: Potential for decrease in water quality due to ingress of silt and hydrocarbons during landfilling.	Buffer to be maintained to site drains Silt fence to be installed.	None	Yes Adverse effects on site integrity can be excluded as there is no doubt as to absence of effects on these species in view of the conservation objectives.
Brook Lamprey (M) River Lamprey (M)	Access to all watercourses down to 1 st order streams, no decline in extent and distribution of spawning				

	beds, minimum 3 no. age/size groups present, mean catchment juvenile density				
Salmon (M)	100% channel down to 2 nd order accessible from estuary, maintain or exceed fry mean catchment wide abundance threshold, no significant decline in out-migrating smolt abundance, water quality to be at least Q4 and no decline in number and distribution of spawning redds.				
Otter (M)	No significant decline in distribution or extent of terrestrial or freshwater habitat. No significant decline in couching or holt sites. No significant decline				

	in fish biomass available, no significant increase in barriers to connectivity.				
Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation (M)	No decline in habitat distribution, maintain/restore appropriate hydrological regimes and water quality to support the natural structure and functioning of the habitat	Populations exist within a separate sub-catchment and no pathways exist.	N/A	N/A	Yes Adverse effects on site integrity can be excluded as there is no doubt as to absence of effects on this habitat in view of the conservation objective
<p>Overall conclusion: Integrity test</p> <p>Following the implementation of mitigation, the proposed development will not adversely affect the integrity of Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC in view of the site's conservation objectives. No reasonable scientific doubt remains as to the absence of such effects.</p>					

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the policies and provisions of the Kerry County Development plan 2015, which seek to support the sustainable development of agriculture and the nature and scale of the development proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development, which seeks to reclaim lands for agricultural use, would not seriously injure the amenities of the area, would not be likely to have significant effects on the environment, or the ecology of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Environmental Impact Assessment

The Board completed a screening determination of the proposed development and considered that the Environmental Impact Assessment Screening Report submitted by the applicant, identifies, and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to: -

- nature and scale of the proposed development, which is below the threshold in respect of 11(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended),
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003),

- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),
- The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Natura Impact Statement,

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required

Appropriate Assessment: Stage 1:

The Board considered the Natura Impact Statement and all the other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European Sites. The Board agreed with and adopted the screening assessment carried out and conclusions reached in the Inspector's report that Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 00365) is the only European Site in respect of which the proposed development has the potential to have a significant effect.

Appropriate Assessment: Stage 2:

The Board considered the Natura Impact Statement and associated documentation submitted with the application, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the aforementioned European Site in view of the site's Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the Conservation Objectives for the European Site.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the site's Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the site's Conservation Objectives.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 16th day of March 2021 and 15th day of June 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. All of the environmental and construction mitigation measures, as set out in the Environment and Traffic Safety Booklets received by the planning authority on the 16th day of March 2021 and the Natura Impact Statement received by the planning authority on the 16th day of March 2021 as amended by the details submitted on the 15th day of June 2021, shall be implemented by the developer, except as may otherwise be required in order to comply with the conditions of this Order.

Reason: In the interests of clarity and of the protection of the environment during the construction and operational phases of the development.

3. (a) The importation of soil shall be completed within 12 months of commencement.

(b) The importation of soil and operation of associated machinery shall be carried out only between the hours 0800 and 1800 from Mondays to Fridays inclusive. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of good traffic management and to protect amenities of the area.

4. (a) Prior to commencement of development, a system of advanced warning signs shall be erected along the access road to the site which shall be agreed in writing with the planning authority.

(b) The public roadway shall be kept clean and tidy at all stages of the development. Reason: In the interest of traffic safety.

5. The final use of the lands after the completion of the importation of materials shall be for agricultural purposes only.

Reason: In the interest of clarity.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the

planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Pauline Fitzpatrick
Planning Inspector

December, 2021