



An
Bord
Pleanála

Inspector's Report ABP-311426-21

Development	Restoration of lands comprising the infilling and raise of a deep valley.
Location	Kilmartin, Coynes Cross, Newcastle, Co. Wicklow
Planning Authority	Wicklow County Council
Prospective Applicant	Herbert Street Property Finance.
Inspector	Karla Mc Bride
Date of site inspection:	20 th July 2019

1.0 Introduction

- 1.1. Herbert Street Property Finance requested Pre-Application Consultations under Section 37B of the Planning and Development Act, 2000, as amended, for the proposed infill of a deep valley with soil and stone waste at Kilmartin, Coynes Cross, Newcastle, Co. Wicklow. A virtual Pre-Application Consultation took place between An Bord Pleanála (the Board) via MS Teams and the prospective applicant on 20th December 2021 (see appended signed Record).
- 1.2. The primary purpose of this meeting was to address the issue of whether or not the proposed development constitutes strategic infrastructure for the purposes of the 2000 Act, as amended by the Planning and Development (Strategic Infrastructure) Act, 2006, and to consider matters relating to the proper planning and sustainable development of the area or the environment which may have a bearing on the Board's decision, and procedures involved in making the application.
- 1.3. This Report provides an overview of the proposed project, a summary of the meeting and the advice provided by the Board and the legislative provisions.

2.0 Site Location

- 2.1. The site of the proposed development is located within a rural area in County Wicklow, to the immediate E of Junction 14 along the M11/N11. The site and surrounding lands are currently in agricultural use (sheep grazing), the lands slope down from N to S and the site comprises a naturally occurring steep "V" shaped valley. The site boundaries are defined by trees and hedgerows, Kilmartin Stream flows along the S site boundary in an easterly direction towards the coast, and there are farm buildings located to the N. There are no sensitive built or natural heritage features in the immediate vicinity. Permission to infill the valley was previously granted by the Board in 2009 however this permission has now expired, and an EPA waste licence was received at the time.

3.0 Proposed development

3.1. The proposed development on the c.22.6ha site would comprise infilling the deep valley with between c.350,000 and c.500,000 tonnes of clean soil and stone per annum over a 6 to 8 year period (incl. restoration). The project would have a 10 to 15 year lifespan. The prospective applicant stated that clean soil and stone waste would mainly originate from construction sites in Dublin and Wicklow, and that c.180,000 tonnes of soil and stone was imported to the site between 2006 and 2009 under the terms and conditions of the previous planning permission and waste licence.

4.0 Prospective applicants' case

4.1. Herbert Street Property Finance is proposing to infill and raise the level of a "V" shaped valley at the lands described in section 2.0 above which would comprise the works described in section 3.0 above.

4.2. The key elements of the Applicant's submission in support of the case not being designated as strategic infrastructure are summarised as follows:

- Proposal is of a class of development falling within the Seventh Schedule but does not comply with the 3 x criteria set out in section 37(A)(2) of the Act, and the proposed development should not be deemed a SID.
- Licenced Soil Recovery Facilities of similar nature or scale are not provided in any plan or programme as being of strategic economic or social importance to the State or to the Wicklow Local Authority Functional Area.
- There are no specific aims or objectives set out in the current NFP or economic strategies to necessitate the provision of licenced soil recovery facilities at national or regional level.
- The proposed development is fully within the Wicklow Local Authority Functional Area.



5.0 Pre-Application Consultations

- 5.1. One Consultation meeting was held virtually via MS Teams.
- 5.2. This meeting was held on 20th December 2021. The prospective applicant described the site and surroundings, outlined the main elements of the proposed development and provided an update on the status of the project. The policy context for the project was explained, the site constraints were identified, and the consultations undertaken to date with Wicklow County Council were outlined.
- 5.3. The prospective applicant clarified that it is not intended to process soil and stone.
- 5.4. The prospective applicant raised the possibility of applying for the development under Article 27 of the EU (Waste Directive) Regulations 2011, as amended. The Board's representatives noted that the prospective applicant had requested pre-application consultations pursuant to section 37B of the Planning and Development Act, 2000 as amended for development that falls within a class of development set out in Schedule 7 (i.e. a waste installation with an annual intake greater than 100,000 tonnes). The request would therefore be considered in relation to the criteria set out under section 37A (2) of the Act, and that the Board would make a determination on that basis.
- 5.5. The Board's representatives noted the presence of a stream to the S of the site and advised that a full environmental assessment of the site and environs should be undertaken (incl. ecology, aquatic connections to European sites, cultural heritage & haul routes) The prospective applicant highlighted the proximity of the site to the nearby M11/N11 and noted that there were no dwelling houses along the route.

6.0 Legislative provisions

- 6.1. The Board is asked to decide if the proposal is or is not Strategic Infrastructure Development as defined by Section 37A of the Planning and Development Planning Act 2000 as amended by Section 5 of the Planning and Development (Strategic Infrastructure) Act 2006 and by Section 78 of the Planning and Development (Amendment) Act 2010.

6.2. Strategic Infrastructure is defined in the Seventh Schedule of the 2006 Act as amended by S.78 of the 2010 Act and under Class 3 as:

An installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes.

6.3. Section 37A of the Planning and Development Act, 2000, as amended by the Planning and Development (Strategic Infrastructure) Act, 2006 and the Local Government Reform Act 2014, requires that any development specified in the Seventh Schedule should be made to the Board if the proposed development falls within one or more of the following:

(a) the development would be of strategic economic or social importance to the State or the region in which it would be situate;

(b) the development would contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate;

(c) the development would have significant effect on the area of more than one planning authority.

6.4. Article 5 of the Waste Framework Directive, 2008 as transposed by Article 27 of the European Union (Waste Directive) Regulations, 2011 provides for uncontaminated excavated soil and other naturally occurring materials (used on sites other than the one from which they were excavated) to be considered in accordance with the definition of waste and the provisions for by-products and on end-of-waste status under the Waste Framework Directive, 2008.

6.5. EPA Guidance on Soil and Stone By-products (in the context of Article 27 of the EU (Waste Directive) Regulations 2011) Version 3, June 2019, seeks to encourage the prevention of waste including the lawful and beneficial use of excess uncontaminated soil and stone. This Guidance states that excess uncontaminated soil and stone resulting from excavation works (the primary aim of which is not the production of soil and stone) is a production residue and is regarded as a by-product only if all four by-product conditions are met (as set out in Article 5 of the EU Waste Framework Directive and Article 27 of the Waste Directive Regulations, 2011):

- (a) further use of the soil and stone is certain;
- (b) the soil and stone can be used without any further processing other than normal industrial practice;
- (c) the soil and stone is produced as an integral part of a production process; an
- (d) further use is lawful in that the soil and stone fulfil all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

7.0 **Assessment**

- 7.1. In my opinion the proposed development would comprise a Seventh Schedule development as it would relate to an installation for the disposal, treatment or recovery of waste with a capacity for an annual intake greater than 100,000 tonnes.
- 7.2. I consider that the proposed development does not meet the requirements of condition (a) of Section 37(A) (2) of the Planning and Development (Strategic Infrastructure) Act 2006 as it would not be of strategic economic importance to the state and region due to its scale, limited duration and location proximate to the intake source.
- 7.3. Section 37(A) (2) (b) of the above Act requires the development to contribute substantially to the fulfilment of any of the objectives in the National Spatial Strategy (Project Ireland 2040-National Planning Framework) or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate. In my view the proposed development is not of a scale that would substantially contribute to the spatial, economic or waste management objectives for the region as set out in Section 37(A)(2)(b).
- 7.4. The proposed development, having regard to its scale and location proximate to the intake source, would not have a significant effect on more than one planning authority, having regard to Section 37(A) (2) (c) of the above Act.
- 7.5. It is noted that the proposed development could fall within the remit of Article 5 of the EU Waste Framework Directive, 2008 and Article 27 of the EU (Waste Directive) Regulations 2011, as set out in section 6.2 above and the associated EPA Guidance on Soil and Stone By-products, 2019.

7.6. The proposed development, which would provide for the infill and raised levelling of a natural deep "V" shaped valley with uncontaminated soil and stone sourced from development sites in the region, could be regarded as a production residue and therefore a by-product subject to compliance with the 4 tests summarised in section 6.5 above. However, the planning permission that was granted in 2009 has expired, and the proposed works would not currently comply with the fourth test (d) with regard further lawful uses.

8.0 Recommendation

I recommend that the Board serve a notice on the prospective applicant, pursuant to Section 37(B)(4) Planning and Development Act 2000, as amended, stating that it is of the opinion that the proposed development does not constitute a strategic infrastructure development for the following reasons and considerations:

Reasons and considerations

Having regard to the size, scale, location and limited duration of the proposed development, and the proximity of source material, it is considered that the proposed development comprising the infilling and raise of a deep valley, associated infrastructure and site works at Kilmartin, Coynes Cross, Co. Wicklow, constitutes development that falls within the definition of infrastructure in the Seventh Schedule but is considered not to be of strategic importance by reference to the requirements of Section 37A (2) (a), (b) & (c) of the Act. An application for permission for the proposed development directly to An Bord Pleanála under S.37E of the Act is therefore not required.



Karla Mc Bride

Senior Planning Inspector

4th February 2022

