



An
Bord
Pleanála

Inspector's Report ABP-311551-21.

Development	Land improvement – importation of 47,000 tonnes.
Location	Fleshtown, Sallins, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	211062.
Applicant(s)	Julie Doyle.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Julie Doyle.
Observer(s)	None.
Date of Site Inspection	23 rd August 2022.
Inspector	Philip Davis.

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1.0 Introduction

This appeal is by the applicant against the decision of the planning authority to refuse permission for the importation of material for land restoration in a rural area in County Kildare. The grounds of refusal relate to the impact on a rural area of high amenity, and the impact (safety) on road users.

2.0 Site Location and Description

2.1. Fleshtown, County Kildare

The townland of Fleshtown is located some 2.5 km north-west of the village of Sallins and a similar distance south-west of Clane in flat generally low-lying lands in central Kildare. It is just north of the Grand Canal at the 16th Lock at Digby Bridge. The area is served by a number of minor third class roads, with the R407 about 2km to the west and the R409 a similar distance to the east. The L2004 (Millicent Road) runs north to south through the area, crossing the canal at Digby Bridge. The area is characterised by large fields in arable and tillage use, mostly bounded by ditches with tree lines and hedgerows. There is a low ridge around 10-20 metres above the level of the lock running from a highpoint of 94 metres to the north-west of the townland, roughly to the south-east.

2.2. Appeal site

The appeal site, with a site area given as 4.2 hectares, is an elongated agricultural field extending south east to within around 100 metres of the Grand Canal, with an access track running east to join the local road just over 500 metres north of Digby Bridge next to a dwelling. It is approximately 100 metres wide and 400 metres in length. The has a distinct scarp slope to the south-west, where it bounds a field at a deep drainage ditch which runs to a marshy area between the site and the canal. There are a number of dwellings within around 100 metres of the site to the east, all facing the L2004 local road (Millicent Road).

3.0 Proposed Development

The proposed development is for the importation of 47,000 tonnes of soil and stones over a period of 3-5 years for the purpose of land improvement. The proposed

development includes temporary facilities including a wheel wash and effluent treatment.

A number of technical documents were submitted with the planning application, including a Noise Impact Assessment, a Flood Risk Assessment, and an Ecological Impact Assessment

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse planning permission for two reasons, summarised as follows:

1. It is contrary to policies (LA2, WC3, WV1 and WV2) in terms of protecting a rural area designated High Amenity and close to a proposed NHA and protected structure (Digby Bridge and 16th Lock).
2. Due to its scale and nature and the number of heavy vehicle movements generated, it would result in a safety hazard and lead to structural deterioration of the L2004.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- The planning authority noted the planning history, including the previous refusals for similar developments and the Board comments on two previous appeals.
- Notes that it is within 150 metres of the Lock (a protected structure) and just 33 metres from the pNHA.
- Notes the AA Screening accompanying the report.
- The area is designated as part of the 'Northern Lowlands Landscape Character Area, but it is adjacent to and visible from the grand Canal, which is considered to be within an Area of High Amenity (Section 14.5.4 of the 2017-2023 Kildare County Development Plan). It is noted that the view from the canal is a designated Protected Viewpoint (reference GC5).

- Outlines various policies considered relevant, including AG1; AG2; LA 2; LA 3; LA 4; LL1; LL2; LL3; WC1; WC2; WC3; WC; WV1; WV2 and WV3.
- It is noted that the Board refused the previous permission for just one reason, but it is stated that the planning authority has not changed its position on the overall reasons for refusal. It is also noted that the Environment Section is not satisfied with the Noise Impact Study received.
- It is recommended that permission be refused for the proposed development (2 reasons).

4.2.2. Other Technical Reports

Transportation and Public Safety Department: It is considered that the L-2004 local road is too narrow and is not suitable for HGV traffic. It is also noted that Digby Bridge is very narrow and interaction with pedestrian movements at this location would be a serious safety issue for vulnerable road users.

Maynooth Area Office: Recommended refusal due to L-2004 being inadequate for the proposed level of traffic.

Water Services: Conditions recommended.

Environment Section: Refers to Noise Impact Study. Notes that the form of noise calculation used is not applicable to the type of proposed activity. Further information requested.

Heritage Officer: No objection, conditions recommended.

4.3. Prescribed Bodies

None on file.

4.4. Third Party Observations

None on file.

5.0 Planning History

21/203: Permission granted for new agricultural entrance and gravel yard on overall landholding.

ABP-305633-19 (19/907): Board upheld the decision of the planning authority to refuse permission for the importation of 47,000 tonnes to the site. The planning authority refused for three stated reasons (the first two as with the current appeal). The Board refused for one reason – that it would require an access which appeared to be an unauthorised use.

PL09.246641 (16/210). The Board upheld the decision to refuse permission for the importation of 52,000 tonnes of material to the site, for different reasons to the planning authority. The planning authority refused for similar reasons to the current appeal, but the Board stated that it was not satisfied that the proposed development would not result in an increase in pluvial flooding in the area.

03/653: Refused for the importation of material for the reinstatement and land raising of the stie.

6.0 Policy Context

6.1. Development Plan

The site is located in open countryside, indicated as 'High Amenity' in the Kildare County Development Plan 2007-2023. There is a protected structure, Digby Bridge and a canal Lock within 200 metres of the site. There is a protected view of and to the bridge and lock indicated in the development plan.

The 2023-2029 Kildare County Development Plan took effect from the 28th January 2023. The relevant policies and designations have not changed significantly from the previous CDP.

6.2. Natural Heritage Designations

The Grant Canal pNHA, (Site Code 002104), is located adjacent to the subject site. It is not located within or adjacent to any EU designated sites. The closest Natura 2000 site is the Ballynagagh Bog SAC (Site Code: 000391) and the Ballynagagh Lake SAC (Site Code 001387, both located approximately 5km to the north west. Mouds Bog SAC (Site Code: 002331) is located approximately 7.5km to the southwest of the site.

6.2.1. EIAR

The requirement for EIA of certain types of developments is transposed into Irish legislation under the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001 as amended. Schedule 5, Part 1 of the Regulations provides a list of projects which are subject to mandatory EIA based on, inter alia, their scale, nature, location and context. Part 2 of Schedule 5 includes a list of projects that require EIA where specific thresholds are breached or where it is determined that there is potential for significant environmental impact.

In this context, the following Schedule 5 Part 1 projects relate to waste management:

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9, of non-hazardous waste with a capacity exceeding 100 tonnes per day.

The development does not come within the scope of the above.

Schedule 5 Part 2 projects:

Agriculture, Silviculture and Aquaculture

- (c) Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.

11. Other projects

- (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

Article 92 of the Planning and Development Regulations, 2001, (as amended) defines sub-threshold development, as 'development of a type set out in Schedule 5 which does not exceed a quantity, area or other limit specified in that Schedule in respect of the relevant class of development'. The Board will note the figures presented by the applicant in terms of the volume of inert material waste intake will be 47,000 tonnes over a period of 3 -5 years. In this context, together with the fact that the development, if permitted, will require a Waste Permit, the 25,000 tonne per year maximum will not be reached in accordance with the development description, and therefore, the development does not require mandatory EIA. The need for

environmental impact assessment, therefore, can be excluded at preliminary examination.

7.0 The Appeal

7.1. Grounds of Appeal

- The appeal provides an overview of the site and the proposal, arguing that the entrance serves a permitted skip hire business based in an adjacent yard and that the site itself is a 'banal tract of under-used farmland' with no features of importance.
- It is submitted that the drainage on the property is severely impaired and of low quality and as such is unsuitable for any form of tillage with limited grazing use.
- Photos are attached of the access and site.
- The submission discusses in some detail the appeals and the Board decisions, including comments in the Board Direction in PL09.246641.
- It is noted that it falls under Class 5 of the Waste Management Regulations 2007 as amended.
- It is noted that policies AG1 and AG2 of the CDP outlines support for land improvements.
- It is noted that the Inspectors in the previous appeals endorsed the acceptability of land raising on the site.
- It is submitted that the visual impact of the proposed works would be only on the immediate environs of the site as it is not visible from a wider area, and that the long term impacts would be an improvement and hence the proposals would be in accordance with development plan policy.
- It is submitted that there is no basis for considering that the proposed development would have any impact on ecology or on drainage/flooding issues.
- The Flood Risk Assessment is referred to with regards the issue of flood risk.

- It is noted that in PL09.246641 the Inspector addressed the issue of visual impacts in some detail and concluded that there would be no negative impact on the landscape or the setting of the protected structures. It is submitted that the first reason for refusal has effectively been addressed by the Board in its previous decisions, in which the planning authority reason was not accepted.
- It is noted that the access arrangements have been changed from previous applications and that the proposed entrance has been permitted with regard to other developments (planning reg 21203). It is submitted that the access issue has been fully addressed.
- It is submitted with regard to the haul road that the Board on previous occasions considered that the haul road was adequate – explicitly so with regard to the Direction over-ruling the inspectors recommendation. It is suggested that the reason for refusal has been fully addressed in the previous decisions.
- It is restated that the Board has considered the effects in previous appeals and has endorsed the suitability of the site and haul road and it is submitted that there are no other factors raised that would prompt a different decision – the applicant requests that the Board over-rule the grounds of refusal on the basis stated in the previous appeals.

7.2. Planning Authority Response

The planning authority states that the planning authority has not changed its view regarding its previous reasons and that the applicant has failed to address the PA concerns regarding the impact of the development on the area of high amenity. In other regards, the planning authority refers the Board to the reports on file.

8.0 Assessment

- Principle of development
- Visual impact and protected structure
- Traffic
- Flooding and drainage

- Appropriate Assessment
- Other issues

8.1. Principle of development

The appeal site is in open countryside in an area identified as 'High Amenity' in the Kildare County Development Plan 2017-2023 and in previous and subsequent plans (the current Plan was adopted in January 2023). It is close to a protected structure, the lock and bridge over the Grand Canal to the south-east and to a pNHA, the Grand Canal. There is extensive vegetation (woodland) between the bridge and the site. The planning authority and applicant have highlighted a range of relevant policies to the type of works proposed, which are essentially favourable towards improving agricultural land subject to environmental and other considerations as set out in the CDP and associated policy.

The appeal site is in open countryside in a mixed agriculture area with both local commercial uses and tourism uses in the area. There are dwellings, some with associated businesses, along the L2004, and at the bridge and lock there is a small café, seemingly mostly serving users of the canal greenway. This stretch of canal appears popular for both local walkers and those cycling or hiking from longer distances and there are ongoing proposals to upgrade the path as part of the Grand Canal Greenway.

The proposed development is substantially the same (apart from the proposed access) as that addressed in **PL09.246641** refused permission on the 12th December 2016) for flooding reasons, and **ABP-305633-19** in which the Board upheld the decision of the planning authority to refuse permission. The planning authority refused for three stated reasons (the first two as with the current appeal). The Board refused for one reason – that it would require an access which appeared to be an unauthorised use. This unauthorised use has since apparently been regularised (the planning authority has not raised concerns about this). The overall policy context has not changed since this decision in February 2020. The only relevant change that I am aware of is that the Grand Canal Greenway has been developed further and has had confirmed funding since that date (the status of the canal as an amenity greenway was identified in the CDP).

I note with regard to the above that the Board generally agreed with the Inspector that the proposed development was acceptable in amenity and traffic terms, with just the issue of the access as justifying refusal. The planning authority has reaffirmed its conclusion that the proposed development is not acceptable in terms of amenity (with regard to proximity to the protected structure and pNHA) and that it is not acceptable in traffic terms – highlighting in particular pedestrian conflicts over the canal bridge.

In this regard I would consider that the overall policy context for the proposed development is neutral, with proposed development such as this to be addressed on the basis of its own merits.

8.2. Visual impact and protected structure

The site is mostly an elongated south-west facing slope with a drop of around 3-5 metres over 100 metres bounded by ditches and high hedges. It is only intermittently visible from the road to the east (the L- 2004). The protected structure is the Digby Bridge, an attractive 18th Century structure over the canal and the associated lock. These are in excellent condition and are well maintained and are clearly a popular local amenity – there is a new small café (the Digby Bridge Café) in use at the lock and this is clearly a popular stop for dogwalkers and those cycling along the Greenway. There is a small parking area on the south side of the bridge that appears to be mostly used by people accessing the canal for walking or cycling, or just sitting by the canal. I note that the canal has been significantly cleaned up with vegetation removed and some related improvements since the photographs in the previous appeals were taken. While maps indicate that the access track south of the canal is part of the Grand Canal Way, most walkers now seem to use the northern side.

I note that the site is not clearly visible from the immediate vicinity of the lock and bridge due to vegetation and topography, despite the relatively close proximity. It is, however, visible (albeit intermittently, depending on hedge cover) for a significant length (approximately 450 metres) along the canal and towpath. Due to the slight elevation, there would also probably be audible noise from the works along this stretch of canal. For the operational time of the works, it would be a significant and negative feature on the landscape for all recreational users of the Greenway. The

views of the site commence approximately 150 metres from Digby Bridge, which is an identified viewpoint (GC5, Table 14) in the CDP – this is described as views ‘to and from bridges on the Grand Canal’. I note that there is a significant stretch whereby the bridge and the appeal site would be visible from the canal and greenway. Policy WV1 states that it is policy to ‘*Curtail any further development along the canal and river banks that could cumulatively affect the quality of a designated view*’.

While I acknowledge the previous Directions and decisions by the Board on this matter, it seems to me that the ongoing enhancement and improvement of the Grand Canal, and specifically the area around Digby Bridge, as a key Greenway (Kildare County Council issued a Part 8 proposal in 2018 for the works) has substantially increased the sensitivity of this section of the Greenway, and in particular the context immediately around the Lock and Digby Bridge. In this regard I concur with the planning authority that the overall balance of policy is against permitting this proposed development. I recommend therefore that the Board uphold Reason 1 of the decision to refuse.

8.3. Traffic

The access and traffic impact of the proposed development was assessed in both previous appeals – I note that the only ground on which the Board considered the proposed development to be inappropriate was with regard to the previous access. This has now been addressed in the current application. The proposed access is via an existing gate with good visibility in both directions.

The total quantity to be imported (over 5 years) would result in a significant impact on a local country road, one lacking a footpath and generally quite narrow, although there are quite high existing traffic rates due to its location close to a number of towns and villages. The planning authority highlighted specific concerns for pedestrians on the bridge. I note that while it is possible to cross from the carpark to the north (greenway) side via the lock gate, most pedestrians are likely to use the main bridge, which lacks a footpath and is quite narrow. I further note that the greenway itself crosses the road on an unmarked crossing (there is no pedestrian access under the bridge).

The applicant has claimed that the planning authority has raised this as an additional issue in response to the previously raised issues being fully addressed, but I do not consider that this means they are not justified.

While I accept that the road is well used and the additional traffic would be short term, I would still concur with the planning authority that the additional HGV loads on the local road system, and in particular the Digby Road area would be significant and incompatible with the overall policy objective to protect the bridge and environs and facilitate the greenway. I therefore recommend that the Board upholds the planning authority's second reason for refusal.

8.4. Flooding and drainage

The site does not have watercourses but drains to the south-west into a deep south-flowing drain associated with the canal. It is part of the Liffey catchment. There is a marshy area just south of the site (between it and the canal) with a well indicated on available maps behind the lock cottage.

The first appeal on this site was refused for reasons relating to potential pluvial flooding, but the subsequent appeal included a flood report (also submitted with this application) which addressed this issue to the satisfaction of the planning authority and the Board. I consider that subject to conditions the proposed development would not seriously impact on water quality or result in excessive run-off.

8.5. Appropriate Assessment

The site is not located within or immediately adjacent to any EU designated site, although it adjoins closely the Grand Canal pNHA (site code 002104). The closest Natura 2000 site is the Ballynagagh Bog SAC (Site Code: 000391) and the Ballynagagh Lake SAC (Site Code 001387), both located approximately 5km to the north west of the site. Mouds Bog SAC (Site Code: 002331) is located approximately 7.5km to the south west of the site. The Grand Canal pNHA, (Site Code 002104), is located adjacent to the subject site, and within 30m. An ecological report was submitted with the application. The proposed development was screened out by the planning authority and has previously been screened out in the previous two appeals.

Overall, having regard to the distance from the EI designated habitats and the absence of pathways for pollution I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.6. Other issues

There are no records of archaeological or historical features of interest on the site. The planning authority noted issues with the noise report submitted with the planning application – this was highlighted by the Council Environment Section. I recommend that if the Board is minded to grant permission that additional clarification and amendments be sought on potential noise emissions and control from the proposed works.

The Area Office of the Council requested a Special Development Contribution for roads repairs and upgrades if permission was granted.

I do not consider that there are any other issues raised in this appeal.

9.0 Recommendation

I recommend that the Board uphold the decision to refuse permission generally for the reasons stated by the planning authority.

10.0 Reasons and Considerations

The proposed development is located within a rural area close to a designated pNHA (Grand Canal) and a protected structure (Digby Bridge and 16th Lock – B14-46) and close to the Grand Canal Greenway and the Grand Canal Walk. It is the policy of the planning authority as set out in the Kildare County Development Plan 2017-2023 to protect the designated viewpoint to and from the protected structure.

It is considered that to permit the proposed development would contribute to the erosion of the natural rural character of the landscape in this area and would particularly impact on the setting and views towards the protected structure. It would, therefore, contravene policy WV1 of the Kildare County Development Plan, would seriously injure the amenities of the area, and would thus be contrary to the proper planning and development of the area.

The proposed development, by reasons of its nature, scale, location and intensity, would, if permitted, give rise to the generation of additional HGV traffic movements in the area over the proposed 3-5 years operational time period. Having specific regard to the absence of pedestrian facilities at Digby Bridge and the crossing of the road by traffic on the Greenway at an unprotected crossing, it is considered that an increase in volume of HGV's required to service the site would constitute a traffic safety hazard. The proposed development would therefore be contrary to proper planning and sustainable development of the area.

Philip Davis
Planning Inspector

23rd March 2023