



An
Bord
Pleanála

Inspector's Report

ABP-314359-22

Development

Permission for development which will consist of works within a total site area of approx. 1 hectare (Ha) including: (i) Re-profiling works across approx. 0.8 Ha of agricultural land for the purpose of improving the land. The existing ground level will be raised using approx. 11,900m³ of clean sand and gravel. (ii) Ancillary works (across approx. 0.2 Ha) to existing commercial entrance to facilitate sightlines.

Location

Ballina (E.D. Castle Ellis), Castle Ellis, Co. Wexford.

Planning Authority

Wexford County Council

Planning Authority Reg. Ref.

20220701

Applicant(s)

Patrick Cash

Type of Application

Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant(s)	Patrick Cash
Observer(s)	None
Date of Site Inspection	2 nd May 2023
Inspector	Emer Doyle

1.0 Site Location and Description

- 1.1. The site is located in Ballinra, c. 3.5km to the south west of Blackwater, Co. Wexford. The land is currently used for the grazing of horses and is stud railed fenced. The land is undulating at this location and there is a natural severe depression in the lands. See submitted drawings for the topographical profile. In the field where the works are proposed the ground falls steeply from a high point of 83mOD in the south east to a low lying area c. 62mOD.
- 1.2. There is an existing business at this location- Sanrose owned by the applicant. This business supplies graded sands and rootzone mixes to the turf grass industry and supplies golf courses and sports grounds. There are a number of commercial buildings and a yard associated with this business.

2.0 Proposed Development

- 2.1. Permission is sought for the following:
- Re-profiling works across approximately 0.8 hectares of agricultural land for the purpose of improving the land. The existing ground level will be raised using approximately 11,900m³ of clean sand and gravel.
 - Ancillary work to existing entrance to facilitate sightlines. An engineering report was submitted with the application to demonstrate that this is an existing commercial entrance and a drawing is attached to demonstrate that sightlines of 65m in both directions can be achieved at this location.
 - The application is accompanied by the following:
 - Soils Characterisation Assessment
 - AA Screening Report
 - Planning Report
 - Environmental Impact Assessment Screening Report
 - Flood Risk Assessment

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority refused permission for one reason only as follows:

Having regard to the lack of information and detail in the application relating to mitigation measures, source of infill material, possible contamination of the infill material, the planning authority is unable to make a full assessment on the environmental impacts of the proposed development in combination with other development and works in the vicinity of the proposed site. Having regard to the precautionary principle and the lack of mitigation measures provided there is potential for adverse or residual impacts on the receiving environment and the proposed development is therefore considered prejudicial to the protection of the environment and to public health. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report of the planning officer had concerns regarding landscape impact, sightlines at the access, and contamination of the imported material with petroleum hydrocarbons.

3.2.2. Other Technical Reports

Roads Report: Inadequate sightlines available in both directions.

HSE (Environmental Report):

The materials for use for reclamation are described as clean sand and gravel from a greenfield site, however contamination of one sample indicated elevated levels of mineral oil, aromatic hydrocarbon and petroleum hydrocarbons. The application site is in a regionally important gravel aquifer and groundwater vulnerability to contamination at the site is high. A number of conditions are suggested in the interests of environmental protection.

Acting Senior Executive Scientist: Recommends refusal and the removal of the waste to a waste permitted facility as stated in the High Court Heads of Agreement attached to the application.

3.3. **Prescribed Bodies**

Geological Survey of Ireland:

This report refers to a 'proposed dwelling'. No dwelling is proposed at present.

'The Groundwater Data Viewer indicates two aquifers classed as a 'Regionally important Aquifer – Fissured bedrock' underlie the proposed dwelling house development. The Groundwater Vulnerability map indicates the area covered is classed as High.

3.4. **Third Party Observations**

3.4.1. None.

4.0 **Planning History**

PA 20181557

Permission refused to applicant for the raising of ground levels of approximately 2 acres of land by a depth of no greater than 1.5m in order to improve the land for agricultural purposes.

PA 20160843

Permission granted to Philip Cash for dwelling and waste water treatment system opposite the site.

Enforcement: Complaint No. 0012/2018

Alleged unauthorised extraction of sand. The Wexford County Council Environment Section Waste Team has also issued a Section 55 Enforcement Notice under the Waste Management Acts.

Section 2 Heads of Agreement attached to High Court Order

The applicants undertake to make an application for planning permission for the lands at Ballinra within a period of 16 weeks from the date of perfection of the High Court order. The applicants undertake to carry out extensive sampling and testing of the soil in advance of the application.

5.0 Policy Context

5.1. Wexford County Council Development Plan 2022-2028

The site is located in lands designated by the Landscape Character Assessment as 'Lowlands.' These lands have a low sensitivity rating and are the most robust landscapes which are tolerant to change.

- Section 5.5 of Volume 2 sets out policies in relation to agricultural development.
- Section 5.9 of Volume 2 sets out policies in relation to facilities for disposal of inert materials. The Planning Authority will facilitate proposals to deposit clean infill-type waste subject to a number of criteria.
- Section 6.2 deals with assessment of road traffic safety.
- Section 7.4.3 deals with landscape and visual impact assessment

5.2. Natural Heritage Designations

- 5.2.1. Screen Hills SAC Site Code 000708 is located c. 1.1km to the south of the site.
- 5.2.2. Raven Point Nature Reserve SAC Site Code 000710 is located c. 4.9km south of the site.
- 5.2.3. Slaney River Valley SAC Site Code 000781 is located c. 6.2km to the west of the site.

5.3. EIA Screening

- 5.3.1. An Environmental Impact Assessment Screening Report was submitted with the application and includes the information required under Schedule 7 and 7A of the

Planning and Development Regulations, 2001, as amended. I have had regard to same.

- 5.3.2. The development subject of this application falls within the class of development described in Class 11, Part 2 of 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.
- 5.3.3. Section 2.1 of the report outlines that the volume of material for use in the proposed works is 11,900m³ (approximately 17,850 tonnes). This falls significantly short of the 25,000 tonne per annum threshold.
- 5.3.4. The report contends that the material proposed for use in the re-profiling works is not waste as it comprises of clean sand and gravel from a greenfield site. It is also pointed out that Wexford County Council have already decided in relation to a history case that EIA is not required. Nevertheless a precautionary approach has been adopted in this instance.
- 5.3.5. Having regard to the nature and modest scale of the proposed development, it would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of the First Party appeal can be summarised as follows:
- Wexford County Council did not assess the correct entrance (i.e. the existing Sanrose Limited complex to the north of the site.) A letter from an engineer setting out traffic movements and access improvements is included with the appeal.
 - A soil characterisation report was submitted with the application. The mineral oil was detected in one sample only and is well below the threshold level set out in EPA Guidance.

- The Flood Risk Assessment was submitted with the original application.
- The soil and stone to be used in the proposed development is not waste and is therefore not subject to the requirements of the Waste Framework Directive.
- A review of the Landscape Character Assessment contained in the Development Plan confirms that the site is not within the 'Screen Hills' Distinctive Landscape. The site is located within designated 'Lowlands' Landscape which has a low sensitivity rating.

6.2. Planning Authority Response

- None.

6.3. Observations

- None.

6.4. Further Responses

- None.

7.0 Assessment

7.1. Having examined the policy context of the proposed development, application details and all other documentation on file, and inspected the site, I consider that the key issues in this appeal relate to the following:

- Details relating to the nature/ source of materials and environmental issues
- Landscape and Visual Impact
- Traffic Safety

7.2. Details relating to the nature/ source of materials and environmental issues

- 7.2.1. By way of context, there is a Heads of Agreement (See Appendix 1 of appeal documentation) attached to a High Court Order (Record No. 2019/888 J.R.). It required that a planning application be submitted to Wexford County Council within 16 weeks for re-use of sand and gravel excavated in Ballinra and currently stored in two separate locations in Ballinra and Kereight in Co. Wexford. It also required the applicant to carry out extensive tests of the material.
- 7.2.2. A family member of the applicant built a house on lands opposite the site which was granted permission under PA Reg. Ref. 20160843. The works included the excavation of sand and gravel to facilitate the construction of the house.
- 7.2.3. Information in relation to the nature/source of material is contained in the Planning Statement, in the Heads of Agreement and in the Soil Characterisation Report submitted with the application. Details are as follows:
- Total of 11,900m³ of sand and gravel consisting of: 4300m³ of material from a stockpile located in Ballinra (lands within applicant's ownership) 7,600m³ of material from a stockpile in Kereight (3rd party quarry). The material was excavated from land opposite the site when building a home for a family member on lands opposite the site. This was a greenfield site and it was intended to use the materials to improve agricultural lands within the applicant's landholding.
- 7.2.4. The material stored in Ballinra is located c. 150m from the site and there is an internal roadway between the area where this material is stored and the site.
- 7.2.5. The main issue raised by the Planning Authority was in relation to the nature of the material. A HSE report prepared by an Environmental Health Officer notes that the materials for use for reclamation are described as clean sand and gravel from a greenfield site, 'however it is noted from the Soil Characterisation Assessment that results indicated elevated levels of; mineral oil in one sample and total aromatic hydrocarbons and total petroleum hydrocarbons in Y3 soil samples results from the Ballinra site.'
- 7.2.6. The appeal addresses this aspect and states that page 7 of the EPA Guidance on waste acceptance criteria states that BTEX mineral oil, PAH and PCB should not be

present in samples of uncontaminated soil and stone. However, the guidance goes on to set maximum concentration and or soil trigger level for these compounds as follows:

Total BTEX – 0.05 mg/kg

Mineral oil – 50 mg/kg

Total PAHs – 1 mg/ kg

Total PCB – 0.05 mg/kg

- 7.2.7. The Characterisation Assessment collected 10 samples of soil from both the Ballinra and Kereight locations. Tables 2.3 and 2.4 outline the results of the soil testing. The only result which was of concern to the Environmental Health Officer was in relation to mineral oil and total aromatic hydrocarbons and total petroleum hydrocarbons in Y3 from the Ballinra site.
- 7.2.8. I note that trace levels of mineral oil, aliphatic and aromatic hydrocarbons were detected in one soil sample Y3. The result for PAHs (polynuclear aromatic hydrocarbons) is indicated to be <0.1. The result for mineral oil at Y3 is 19 mg/kg. This indicates that there are trace levels of mineral oil in this sample. The EPA guidance considers levels below 50mg/kg for mineral oil and 1mg/kg for PAH's would result in a minimal risk of environmental pollution.
- 7.2.9. With regard to impact on lands and soils, the Board will note that the proposed development seeks to infill and recontour the poor quality, low-lying ground to improve the agricultural quality of the land. The land is currently used for grazing of horses. There will be no impacts on the local bedrock geology, and no excavations of the existing surface are proposed. The nearest watercourse is a stream, located c. 360m to the west of the site and the flow direction is away from the application area. The application site is in a regionally important gravel aquifer and groundwater vulnerability is high. The bedrock is classified as a Poor Aquifer (PI) – Bedrock which is Generally Unproductive except for Local Zones and its vulnerability is High. The soils are identified by the Teagasc Soils Map as AminSW- Shallow well drained mineral (Mainly acidic).

7.2.10. A Flood Risk Assessment was submitted with the application which identified that the site is not at risk of groundwater flooding and there is no noted history of flooding events within or in the vicinity of the site.

7.2.11. I am satisfied that the infill material consists of sand and stone taken from a greenfield site. The soil has been tested and whilst there are some trace levels of mineral oil in one sample, these levels are considerably below the trigger levels identified by the EPA guidance. Having regard to the nature of the proposed development, I am satisfied that the use of the infill material does not present any risk to surface water or groundwater contamination in accordance with the policy set out in Section 5.9 Volume 2 of the Development Plan.

7.3. Landscape and Visual Impact Assessment

7.3.1. The site lies within landscape identified by the Landscape Character Assessment (Volume 7 of Development Plan) as 'Lowlands'. These lands are described as generally undulating lands which have a higher capacity to absorb development without causing significant visual intrusion. Table 7-3 Sensitivity Rating identifies that these lands have a low sensitivity rating. Such landscapes are more robust and more tolerant to change and have the ability to accommodate development without significant adverse impacts on the character of the landscape.

7.3.2. The land is undulating at this location and there is a natural severe depression in the lands. See submitted drawings for the topographical profile. In the field where the works are proposed the ground falls steeply from a high point of 83mOD in the south east to a low lying area c. 62mOD.

7.3.3. The proposed infilling of lands to provide for agricultural use is in keeping with the site context and surrounding land use and would not significantly impact views of the wider landscape. Accordingly, I consider that the impact will be localised and once the development is carried out and completed, would not result in undue adverse visual or landscape impacts.

7.4. Traffic Safety

- 7.4.1. Whilst not included in the reasons for refusal, I note that the planner's report identifies that works will be required to facilitate sightlines of 65m at the site location. The planner's report includes photographs of an existing entrance.
- 7.4.2. The appeal points out that the photographs on file relate to a different entrance on the landholding and the Planning Authority have assessed the wrong entrance. A letter is attached to the appeal from an engineer in this regard. Photographs are also included within the appeal documentation of both existing entrances - Photo 2 identifies the entrance proposed which is an existing commercial entrance associated with the business depot of Sanrose at this location. I have examined both entrances and consider that the proposed entrance is the most suitable entrance as it is a large commercial entrance with better sightlines than the second entrance which serves the applicant's dwelling. I concur with the applicant that the Planning Authority did not assess the entrance indicated on the application drawings. I note that both entrances serve the landholding at this location and are linked by way of an internal road. Drawing No. 3 submitted with the application indicates works to the north of the entrance to facilitate sightlines. These works are within the applicant's landholding and I am satisfied that adequate sightlines can be achieved at this location.
- 7.4.3. In terms of traffic movements, the material in Ballinra can be moved from its current location adjacent to the Sanrose business depot to the application site by way of an internal road with no need for any traffic movements on public roads.
- 7.4.4. It is estimated that traffic movements arising from the movement of the stockpile material at the Kereight location will result in approximately 380 No. trips from Kereight to Ballinra and that would take 32 working days or approximately 6-7 weeks. It is stated that this timeframe may be affected by weather conditions or other work activities and may take 12 weeks taking these factors into account.
- 7.4.5. The proposed site is located in a rural location and the road network is typical of these areas. I do not consider that there is any deficiency in the network that would render it unsuitable to carry the additional traffic movements associated with the proposed development. The road network and junctions have sufficient capacity to accommodate additional traffic, and there is adequate visibility at the entrance

provided that the works indicated in engineering report and drawings submitted are carried out. The increase in traffic movements and the timeframe is considered to be relatively modest and would have no discernible impact on the road network. As such, the proposed development would not give rise to a traffic hazard or endanger the safety of other road users.

8.0 AA Screening

- 8.1. I have considered the proposed re-profiling works in light of the requirements of S177U of the Planning and Development Act 2000 as amended.
- 8.2. The subject site is located c. 1.1km from Screen Hills SAC Site Code 000708, 4.9km from Raven Point Nature Reserve SAC Site Code 000710, and 6.2km Slaney River Valley SAC Site Code 000781.
- 8.3. The proposed development comprises of reprofiling works to existing agricultural land together with the improvement of sightlines to an existing access.
- 8.4. No nature conservation concerns were raised in the planning application or planning appeal.
- 8.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European site. The reason for this conclusion is as follows:
 - The modest nature and scale of the development
 - The application is not hydrologically connected to any European site
 - Taking into account the screening determination by the Planning Authority
- 8.6. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment Stage 2 is not required.

9.0 Recommendation

I recommend that the Board grant permission for the proposed development subject

to conditions.

10.0 Reasons and Considerations

Having regard to the rural location of the proposed development, the landscape character of the area in which the appeal site is situated and the scale and form of the proposed development, and subject to compliance with the conditions set out below, it is considered that the proposed development would not be visually obtrusive or give rise to water pollution or risk of flooding of adjoining lands and would be acceptable in terms of public health. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. The public roadway shall be kept clean and tidy at all stages of the development.

Reason: In the interests of traffic safety.

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

Reason: In the interest of clarity.

5. 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.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has

influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Emer Doyle
Planning Inspector

17th May 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	314359-22		
Proposed Development Summary	Infilling of land using inert soil		
Development Address	Ballinra, Wexford.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
No			Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
	Threshold	Comment (if relevant)	Conclusion
No	N/A		No EIAR or Preliminary Examination required
Yes	Class 11 sub threshold	11,900m ³ (approximately 17,850 tonnes in total. This falls significantly short	Proceed to Q.4

			of the 25,000 tonne per annum threshold.	
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4. Has Schedule 7A information been submitted?		
Yes	As precautionary measure	Screening Determination not required

Inspector: _____

Date: _____