



An
Bord
Pleanála

Inspector's Report

ABP-319463-24

Development

For the retention of imported inert material from a slatted shed excavation elsewhere on the farm holding. For land reclamation works involving raising existing ground levels by c0.8m and associated works.

Location

Mallardstown Great, Kells, County Kilkenny.

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

2360345

Applicant(s)

Liam Hennessy and Patrick Hennessy Partnership.

Type of Application

Retention permission

Planning Authority Decision

Refusal

Type of Appeal

First Party

Appellant(s)

Liam Hennessy and Patrick Hennessy

Observer(s)

None.

Date of Site Inspection

7th October 2024.

Inspector

Jennifer McQuaid

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1.0 Site Location and Description

- 1.1. The subject site (1.103ha) is located in the townland of Mallardstown Great, Co. Kilkenny approximately 3.7km east of Callan and 4km west of Kells. The site is accessed off the R699 along a private access road/track. There is a derelict dwelling located along this access track.
- 1.2. There are a number of recently constructed access tracks throughout the landholdings for cattle passing. The site is located at the end of a field boundary, and it is slightly lower lying than the rest of the field. A stream bounds the site to the east.

2.0 Proposed Development

- 2.1. The development relates to the retention of imported inert material from a slatted shed excavation elsewhere on the farm landholdings. The works were carried out for land reclamation involving raising existing ground levels by c.8m and associated works.

3.0 Planning Authority Decision

3.1. Decision

Refusal Retention permission for the following reasons:

1. The site contains an unauthorised landfill where construction and demolition waste has been identified in a previous Waste Classification Report which was submitted to the Environment Section of Kilkenny County Council. All construction and demolition waste must be disposed/recovered at an authorised waste facility; therefore, the works for retention are contrary to the objective of the council to implement the Southern Regional Waste Management Plan as set out in the Kilkenny City and County Development Plan 2021-2027.
2. The site is located within an identified flood risk zone as per the Kilkenny City and County Development Plan 2021-2027. The applicant has failed to carry out an adequate flood risk assessment in accordance with the Department of Environment's Guidance Document entitled The Planning System and Flood

Risk Management as part of the planning application to determine to enable an adequate assessment of the impacts of the proposed development on flooding at the subject site or displacement of flooding to other lands. The proposed development is therefore considered to be contrary to proper planning, protection of the environment and the sustainable development of the area.

3. The applicant has failed to demonstrate that the deposition of material at the site, during a period of heavy rainfall within a flood zone, would not have resulted in likely significant impacts on a Natura 2000 site during the deposition phase of this development; the development is therefore contrary to the protection of the environment and the protection of habitats protected under the EU Habitats Directive.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planner recommended granting retention permission for works carried out up to 26th July 2023. However, the Senior Planner sought further information in relation to a comprehensive Appropriate Assessment addressing the potential for silt to have been washed into the stream at the time of deposition adjacent to the stream which is potentially a pathway to receptor River Barrow and River Nore SAC.
- The eastern boundary bounds the Caherlesk Stream which is not designated as a Natura 2000 site but is hydrologically linked to the King's River located c1.22km north of the site. The King's River is a tributary of the River Barrow and River Nore SAC (Site Code: 002161). Stage 1 Appropriate Assessment is required and submitted.
- The site is not located in a flood zone on the basis of the OPW CFRAM mapping.
- Environmental Risk Assessment was carried out and noted site generally free of anthropogenic material with the exception of trace (less than 2%) inert

material. Planner noted in the event of a grant of permission that any inert waste should be removed off site by an authorised recovery facility.

- Following the further information response, Environment recommended a refusal for the following reason:

The applicants site contains an unauthorised landfill where Construction & Demolition waste has been identified in a previous Waste Classification Report which was submitted to the Environment Section of Kilkenny County Council. All Construction & Demolition waste must be disposed/recovered at an authorised waste facility.

Also, no flood risk assessment has been submitted as part of the planning application. The proposed development is therefore considered to be contrary to proper planning, protection of the environment and the sustainable development of the area.

- The Planning Authority refused permission and noted a Natura Impact Statement is required, as at the time of deposition, the impact on the River Nore/River Barrow Natura 2000 site (SAC) could not be ruled out.
- The Planning Authority noted, in accordance with Section 12B, where a Planning Authority refuses to consider an application for permission under subsection (12) it shall return the application to the applicant, together with any fee received from the applicant in respect of the application. However, the Planning Authority opted to refuse retention permission.

3.2.2. Other Technical Reports

- Roads – no objection.
- Environment – The site is subject to previous enforcement activities for unauthorised disposal of Construction & Demolition waste. A Waste Classification Report identified Construction & Demolition waste in a number of trial holes on site. The site is located inside a Flood Risk Zone as identified on OPW Flood Mapping. It is unclear from information submitted by the applicant what was contained on the 22 loads delivered to site on the 30th of January 2019 & 3 loads on 31st January 2019. Refusal is recommended as

the development is contrary to proper planning, protection of the environment and the sustainable development of the area.

3.2.3. Conditions

- None

3.3. Prescribed Bodies

- Department of Agriculture, Food and the Marine – No response.
- NPWS – No response.
- Inland Fisheries Ireland request any further works, or remedial measures must not permit any deleterious matter to reach surface water systems either directly or indirectly. There should be no interference with the bed, gradient, profile or alignment of watercourses on or adjacent to the site without prior notification and agreement of Inland Fisheries Ireland. Request that the existing riparian vegetation should be maintained and protected. Should alien invasive species as defined by the European Communities (Birds and Natural Habitats) Regulations, SI 477 of 2011, be present on the site, then a plan should be implemented for their control and removal.

No response received in relation to the further information response.

3.4. Third Party Observations

- An observation was received from Peter Sweetman on behalf of Wild Defence. The observation requires the PA to assess the application in accordance with Planning and Development Act 2000 (as amended), to form and record a view on environmental impacts, screen for EIAR, responsibilities under the Habitats Directive, compliance with the requirements of the Water Framework Directive, Appropriate Assessment is required.

4.0 Planning History

No planning history at exact site.

Other planning history on landholdings:

15809: Permission granted for the construction of the following: a) Agricultural building to include cubicle livestock housing with slatted slurry storage tanks, b) apron and 2 no. silage pits along with associated site works.

15808: Permission granted for the construction of agricultural building to include cubicle livestock housing with slatted slurry storage tanks along with associated site works.

15807: Permission granted for a) Construction of agricultural building to include milking parlour, livestock handling facilities, waiting yard, soiled water/parlour washings tank and the following ancillary rooms-dairy, office, chemical store, plant and electrical room and general storeroom. b) Erection of 2 no. meal bins, water storage tank, and 2 no. tanks for rainwater harvesting along with associated site works.

071232: Permission granted to construct slatted shed with associated works.

061920: Permission granted for a cattle unit consisting of a slatted tank and loose shed and associated yards.

5.0 Policy Context

5.1. Development Plan

Kilkenny City and County Development Plan 2021-2027 Volume 1

Section 10.2.9 relates to Waste Management

Section 10.2.9.1 Waste Management Development Management Requirements

- To have regard to the waste produced by proposed developments including the nature and amount of waste produced and proposed method of disposal.
- For all significant construction/demolition projects, the developer shall include an Environmental Management Plan. These plans should seek to focus on waste minimisation in general and optimise waste prevention, re-use and recycling opportunities, and shall provide for the segregation of all construction wastes into recyclable, biodegradable and residual wastes.

- Construction and demolition waste management plans, to be prepared in accordance with the Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects. These plans should seek to focus on waste minimisation in general and optimise waste prevention, re-use and recycling opportunities, and shall provide for the segregation of all construction wastes into recyclable, biodegradable and residual wastes.

Objective 10G – To implement the Southern Region Waste Management Plan.

Section 10.2.6.1 relates to Flood Management

Section 10.2.6.2 Development Management Requirements

- Where flood risk may be an issue for any proposed development, a detailed flood risk assessment should be carried out appropriate to the scale and nature of the development and the risks arising. In particular, any area within or adjoining flood zone A or B, or flood risk area, shall be the subject of a site-specific Flood Risk Assessment appropriate to the type and scale of the development being proposed. This shall be undertaken in accordance with the Planning System and Flood Risk Management – Guidelines and the Strategic Flood Risk Assessment accompanying this Plan.
- If a Site-Specific FRA demonstrates an unmanageable level of flood risk and/or impacts to 3rd party lands, development cannot proceed.
- Proposals for mitigation and management of flood risk will only be considered where avoidance is not possible and where development can be clearly justified with the Guidelines' Justification Test.

Section 7.2 relates to Agriculture.

5.2. National Policy

- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030

- A Waste Action Plan for a Circular Economy, Ireland's National Waste Policy 2020-2025
- Climate Action Plan 2023, as updated

5.3. **Regional Policy**

- Regional Spatial and Economic Strategy for the Eastern and Midland Region

5.4. **National Guidance**

- The Planning System and Flood Risk Management Guidelines (2009)

5.5. **Natural Heritage Designations**

The subject site is not located in a Natura 2000 site or designated site, the nearest are as follows:

- River Nore SPA (site code: 004233) is located approximately 1km north.
- River Barrow and River Nore SAC (site code: 002162) is located approximately 1km north.
- Garryrickin Nature Reserve pNHA (site code: 000403) is located approximately 6km southwest.
- Kyleadohir Wood Nature Reserve pNHA (site code: 000405) is located approximately 7.5km west.

5.6. **EIA Screening**

The proposal relates to disposal of waste within agricultural farm landholdings in a rural area. The subject site is not zoned or located within a designated area. Having regard to the limited nature and scale of the development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Please refer to Form 1 and Form 2 as per Appendix 1 attached.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been received from the applicant. The grounds of appeal can be summarised as follows:

- The material referred to is from the farm complex in Coolaghmore, which is part of the same farm holding.
- The remnants of demolished stone sheds and their contents appear to have been mixed with inert excavated material.
- Aerial images submitted showing the sheds that were demolished, sheds were in existence at time of planning application 071232.
- The material was identified in 2019 following inquiries by the Environment Section and plans were presented by the contractor for its removal and disposal. No material was found that would be harmful to human health or pose a risk to the environment.
- A report carried out by Enviroguide Consultants found that the soil encountered was generally free of anthropogenic material except traces (<2%) of C&D (Construction and demolition) type inclusions at very localised areas of the site. The location of the material is therefore known, and it can be removed.
- Applicant has no objection to a condition to remove the traces of C&D material and its disposal to a licensed facility.
- It is the applicant's intention to remove all identified C&D material from the site. Environment section also required this.
- The Waste Classification Report referred to was not submitted with the application, is not a planning application or planning enforcement document and is not held on the planning application file.
- The referred report was prepared by Enviroguide Consulting on behalf of McGuire Haulage Limited who was responsible for transporting the excavated material to the site in January 2019. This was in response to a section 55

Notice under the Waste Management Act 1996 to 2016 dated 11th March 2019 which directed McGuire Haulage Limited as the “person” responsible for holding, recovering or depositing waste on lands at Mallardstown, Callan, Co. Kilkenny to take measures prescribed to prevent or eliminate environmental pollution. The applicant was also served with a Section 55 Notice at the time but did not prepare a separate report.

- The Waste Classification Report referred to listed site investigation findings and sampling details, but the report was not appended to the planning application or Environment sections response. The report is property of McGuire Haulage Limited, not the applicant.
- Applicant has confirmed that the material was transported by McGuire Haulage Limited from that part of the farm holding. On 11th December 2020, Environment Section wrote to the applicant declaring the entire amount of material that had been transferred from Coolaghmore to Mallardstown Great to be considered waste and a levy to reflect that was due.
- It appears that the Environment Section has influenced the Planning Authority decision on the basis that the small, isolated instances of C&D waste have potentially contaminated the entire deposit of otherwise inert excavation material, or it does not consider the material came from the same farm holding and is therefore, deemed a waste product.
- The planner who visited and inspected the site, referred to the C&D waste observed as inert waste. Being inert, it could not contaminate the excavated inert material.
- The material is all from the same landholdings and the works should be deemed as exempt development.
- No flood risk assessment requested by the Planning Authority at preplanning or as part of the further information request.
- The limited area of the infill and the minimum depth of fill will have minimal displacement of surface water, if any, in the event of a local flooding event arising from a flood breaching the banks of the stream. Any displacement will

be elsewhere on the applicant's lands and not affect any other land ownership.

- The planner screened out the need for an Appropriate Assessment and this was screened out having regard to the findings of the Enviroguide reports. It is unclear on what basis the second planner concluded the works would have resulted in significant impacts arising from the surface water runoff. The fact the inert material deposited was found not to have any material that would be harmful to human health or pose a risk to the environment, should have led the planner to conclude there was no possible significant impact.
- If the applicant believed the works were not exempted development, he would have engaged an ecologist to undertake an Appropriate Assessment Screening.
- The ecologist report submitted ruled out the requirement for a Stage 2 Appropriate Assessment.
- Best practice works in construction have been carried out. The streamside embankment and hedgerows would have been retained, as they were, the deposited material would have been kept a safe distance from the stream, as it was, and the outsides of the stockpiles of material battered down, as happened, to prevent loose material and silt getting washed away. Specific mitigation measures would not have had to be designed into the scheme which would have necessitate the need for an NIS and Stage 2 Appropriate Assessment.

6.2. Applicant Response

- As above.

6.3. Planning Authority Response

- None

6.4. Observations

- None

6.5. Further Responses

- None

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principal of Development
- Waste Disposal
- Flooding
- Appropriate Assessment

7.2. Principal of Development

- 7.2.1. The site is part of overall farm landholdings which extends to c176.35 hectares and is part of a partnership between 2 landowners and extends over three farms; one in Coolaghmore and two (adjoining) at Mallardstown Great/Rathculbin, County Kilkenny. The part of the farm holding from which the imported material came is at Coolaghmore, Windgap and extends to c. 44.42ha and deposited at Mallardstown Great. One landowner is the registered owner of the lands at Coolaghmore and Mallardstown Great where the material was brought from and to.
- 7.2.2. The material deposited at Mallardstown Great from Coolaghmore was, moved from within the same farm holding and ownership. The grounds of appeal state that in order to construct the slatted shed at Coolaghmore, it was necessary to demolish some old stone sheds and that remnants of these sheds and some of their contents appear to have been mixed up with inert excavated material. Aerial images are submitted to show the sheds that had to be demolished. The grounds of appeal outline that the applicant understood that bringing material from one part of the farm holding to another part for the purposes of land reclamation/improvement was exempt from planning under Class 11 (Land Reclamation) of Part 3 of the Planning

and Development Regulations 2001 as amended. However, the subject site is 0.301ha and above the 0.1ha limitation, therefore the exemption does not apply. Article 8C of the Regulations permits the reuse of material from within a farm holding, but not in respect of filling wetlands. The application is without prejudice to the lands being wet land, but not wetlands. The applicant plans to apply for a new slatted shed at Rathculbin and he will have another c. 3000m³ of material to excavate. This apparently will be sufficient to complete the current reclamation of the site. And will be subject to a new planning application.

7.2.3. The applicant has excavated inert material (approx. 3300m²) at the farm in Coolaghmore and transported the material to Mallardstown Great for infilling purposes and to raise the land levels by c0.8m. The farm at Coolaghmore is located approximately 7.6km by road distance from the subject site. Most of the soil has been spread apart from a single pile of 18m³, plus the stripped topsoil (1915m³ in 3 separate piles). From the aerial images submitted, I am satisfied that the applicant has moved inert material from one part of the landholdings to another part of the same landholdings. The proposal is not exempt from planning permission as the area is over 0.1 hectares and full planning permission is applicable. The development is acceptable in principle due to the nature of the development and the location of infilling of “wet” low lying farmland.

7.2.4. Having regard to the nature of the development and the location of same within the same farm landholdings, which will result in a benefit to the agricultural farm landholding, I consider the development complies with section 7.2 Agriculture of the CDP which states; “Agriculture is a vital part of the economic life of the county and is a major driver for sustaining, enhancing and maintaining the rural economy and culture”. The development is subject to the protection of the environment which is assessed in the following section. Therefore, it is my opinion that the retention of land reclamation is acceptable in principle.

7.3. **Waste Disposal.**

7.3.1. The extent of material placed on site (1.103ha) is estimated as 3,914m², the volume of material is estimated to 2,740m³. The material was placed on site on 30th and 31st January 2019. It is understood that the site was stripped prior to importing and placement of the inert material from the excavated area for the slatted shed. A

minimum buffer of approximately 6.5m was maintained between the works area and the Caherlesk Stream, where the existing grassed areas, mature hedgerows and trees were retained. The imported material was infilled and compacted; the imported materials were subsequently seeded with grasses. Soil stockpiles are retained onsite.

- 7.3.2. The grounds of appeal state that site investigation and assessment of the site was carried out in 2019 following inquiries by the Environment Section of Kilkenny County Council. A detailed assessment was carried out by Enviroguide Consultants as part of the retention planning application and found that the soil encountered was generally free of anthropogenic material except traces (<2%) of C&D type inclusions at very localised areas. The location of the material is therefore known, and it can be removed. The applicant has no objection to be conditioned to remove the C&D material. The applicant only intends to retain the inert material and not the C&D material.
- 7.3.3. The grounds of appeal also refute refusal reason 1 from KCC which refers to a previous Waste Classification Report. I note this report was not submitted with the planning application or part of the planning enforcement file. This report was previously prepared by Enviroguide Consulting on behalf of McGuire Haulage Limited, who were responsible for transporting the excavated material to the site in January 2019. It was in response to a Section 55 Notice under the Waste Management Act 1996 to 2016 dated 11th March 2019, which directed McGuire Haulage Limited as the “person” responsible for holding, recovering or depositing waste on lands at Mallardstown, Callan, Co. Kilkenny to take measures prescribed to prevent or eliminate environmental pollution. The applicant was also served with a Section 55 Notice at the time but did not prepare a separate report. It appears that the Environment section consider the small, isolated instances of C&D waste have potentially contaminated the entire deposit of otherwise inert excavation material, or it does not consider the material came from the same farm holding and is, therefore, deemed a waste product.
- 7.3.4. I have reviewed and assessed the Environmental Risk Assessment submitted with the planning application. Note: The Waste Classification Report quoted in the refusal reason is not on file and not part of this planning application. I have requested this

report from Kilkenny County Council, but no report submitted to date. It appears this report was part of the initial investigations by Environmental Section.

- 7.3.5. On 26th April 2019, six trial pit locations (TP01 through TP06) were excavated to a maximum depth of 1.1metres below ground level (mbGL) using a mechanical excavator. The samples were not collected for laboratory analysis. On 8th January 2021, six more trial pit locations (TP07 through to TP12) were excavated to a maximum depth of 1.2mbGL using a mechanical excavator. Six samples were collected for the purpose of laboratory analysis. The soil samples were generally free of anthropogenic material with the exception of trace (<2%) C&D (construction and demolition) type inclusions at very localised areas of the site. Bedrock and groundwater/water seepages were not encountered in any of the trial pits during the site investigations. The analysed results indicate there is no identified potential human health risk associated with materials placed at the site. In regard to environmental harm, the reported levels of ammonia/ammonium as N in soil leachate at trial pit TP12 was above the applicable levels, all other trial pits sample locations were less than the laboratory limits of detection. It was reported that the localised concentration levels could potentially be attributed to the material placed at the site, given the agricultural land use at the site and the surrounding lands within the farm holding, it is considered to be likely attributed to onsite activities (i.e. Agricultural runoff). Overall, it is considered that the reported analytical results indicate that the sampled material at the site does not pose a significant risk of environmental harm.
- 7.3.6. I note Environment Section of Kilkenny County Council issued a refusal based on an unauthorised landfill where construction and demolition waste has been identified in a previous Waste Classification Report. The referred to report has not been submitted with this planning application and the details of which are not outlined in the planning report of Kilkenny County Council. I have based my conclusions on the information submitted with the file and the details submitted in the Environmental Risk Assessment. The Environmental Risk Assessment submitted is detailed and provides extensive information in relation to the trial pits carried out.
- 7.3.7. It is in my opinion, that the levels of C&D waste <2% are minimal and cannot be considered as a human or environmental risk Assessment. The majority of the material deposited on site is inert material relocated from one part of the farm holding to another part. A total of 12 trial pits were carried out and from a visual and

laboratory analysis, only traces of C&D were encountered. The applicant was carrying out land reclamation works on a low lying and wet areas of agricultural land. It was evident from my site visit, that the surrounding lands are primarily use for agricultural purposes. The land and access to the subject site are well maintained and there was no other evidence of waste deposited on site. The deposited material is overgrown and well vegetated, there was no visual evidence of C&D waste on the site.

- 7.3.8. Having regard to the Environmental Risk Assessment submitted with the planning application and my own site inspection, I do not consider the material deposit could be considered as hazardous waste, the levels of C&D waste are minimal and will have no adverse impacts on human health or environmental health. It is my opinion that the land reclamation complies with Section 7.2 Agriculture of the CDP. In any event, the applicant shall be conditioned to remove any trace quantities of C&D waste, and this should be removed to a suitably authorised recovery facility for further processing and detailed waste management records should be maintained demonstrating compliance with relevant waste management legislation.

7.4. Flooding

- 7.4.1. The 2nd refusal reason states the applicant failed to carry out an adequate flood risk assessment and therefore, the Planning Authority were unable to carry out an adequate assessment of the impacts of flooding on the subject site or displacement of flooding to other lands. There is a stream located at the eastern boundary of the site, which is a tributary that flows into the King's River which is part of the River Barrow and River Nore SAC and River Nore SPA. As per the National Indicative Fluvial Mapping there is a medium probability of flooding (1:100) for the site.
- 7.4.2. The grounds of appeal state the site is located within an area identified on the OPW flooding maps as an area of "National Indicative Fluvial Flooding". This is opposed to the areas identified as CFRAM areas of low, medium and high risk of flooding (Flood zones A, B and C). The Planning Authority did not request a flood risk assessment, either at preplanning or in the request for further information.
- 7.4.3. I have considered the information submitted and the location of the site, which is in a rural area and a significant distance from any public road, dwelling or other structures, and the surrounding area is farmland. The site is located within an area

identified on the OPW flooding maps as an area of “National Indicative Fluvial Flooding”. The site is not identified on the CFRAM maps or identified as having a low, medium and high risk of flooding (Flood zones A, B and C). The information on National Indicative Fluvial Mapping state this data shows the modelled extent of land that might be flooded by rivers (fluvial flooding) during a theoretical or “design” flood event with an estimated probability of occurrence, rather than information for actual floods that have occurred in the past. The maps identify that the low and medium probability of river fluvial flooding is located along the stream boundary. The applicant has retained a 6.5metre buffer along the stream. Therefore, the infill material is not located within the probability of river fluvial flooding along this stream.

- 7.4.4. I consider that the location of the infill material is a sufficient distance from the stream and outside the probable flood risk area. In addition, having regard to the size of the infill area which intends to increase the maximum increase land levels by c.0.8metres, I do not consider that the proposal will have a negative impact on potential flooding in the area. The site location is deemed as less vulnerable development as per The Planning System and Flood Risk Management Guidelines for Planning Authorities. Therefore, the land reclamation is considered acceptable.
- 7.4.5. Having regard to the location of the site and the development outside the probable flood risk area and the nature of the development, I consider that the development complies with “The Planning System and Flood Risk Management Guidelines for Planning Authorities” and will not have an adverse impact on flooding on the subject site or elsewhere.

8.0 AA Screening

- 8.1. The Planning Authority raised concerns in relation to Section 34(12) (Substitute Consent) of the Planning and Development Act 2000 (as amended) and consider that an appropriate assessment would have been required at the time of deposition of the material to fully assess the effects on the Conservation Objectives of the River Nore/River Barrow SAC. Although, the Planning Authority did not invalidate the application and considered given the definition under Section 177v of the Planning and Development Act, 2000, as amended that the best course of action would be to issue a refusal. The 3rd refusal reason states, “the applicant failed to demonstrate

that the deposition of material at the site, during a period of heavy rainfall within a flood zone, would not have resulted in likely significant impacts on a Natura 2000 site during the deposition phase”.

- 8.2. I have undertaken my own AA Screening (see Appendix 2), having regard to the information contained in the file I have concluded that the development individually or in combination with other plans or projects would not be likely to have a significant effect on European Site River Barrow and River Nore SAC (site code: 002162) or River Nore SPA (site code: 004233) or any other European site, in view of the site’s Conservation Objectives and Appropriate Assessment is not therefore required.

This determination is based on the following:

- No surface water run off as the deposited material is in four mounds that have become established by colonising vegetation.
- Distance of 6.5metre from the stockpile to the stream.
- Site survey on 8th November 2022, no evidence of siltation on the wetland area during the site visit which was during heavy rainfall. The water in the tributary that flows into the King’s River (River Barrow and River Nore SAC/River Nore SPA) was also clear at the time of surveying.
- An additional survey was carried out on 30th November 2023, two surface water sample collection were taken from the Caherlesk Stream at locations upstream and downstream of the site and in particular stockpile SP4 (located along the eastern boundary of the site). The water was observed to run clear and there was no evidence of physical impacts to the river bank or siltation of the riverbed. The samples laboratory analytical report results were:
 - o The reported concentrations of dissolved metals at monitoring locations SW1 and SW2 were less than the laboratory limits of detection and/or less than the applicable SW EQS.
 - o The reported concentrations of ammoniacal nitrogen and BOD at monitoring locations SW1 and SW2 were also less than the laboratory limits of detection and/or less than the applicable SW EQS.
 - o The reported concentration of turbidity ranged from 0.6 Nephelometric Turbidity (NTU) to 2.9NTU. The results are indicative of clear water which is consistent with the findings of the site walkover survey.

9.0 Recommendation

I recommend that planning permission should be granted, subject to conditions, as set out below.

10.0 Reason and Conditions

Having regard to the nature & scale of the retention development located in a rural area of Kilkenny County, the provisions of Kilkenny City and County Development Plan, Volume 1, 2021-2027, particularly in relation to Section 7.2 relates to Agriculture, which identifies that agriculture is a vital part of the economic life of the County and is a major driver for sustaining, enhancing and maintaining the rural economy and culture. It is considered that the retention development would not be prejudicial to public or environmental health and would be acceptable in terms of location and visual amenity. The retention development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 27th day of July 2023, 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 imported material shall comprise of inert soil, stone and topsoil only and shall be levelled, contoured and seeded upon the completion of the works and protected until established.

Reason: In order to assimilate the development into the surrounding rural landscape, in the interest of visual amenity.

3. A) a minimum 5-metre-wide buffer zone shall be maintained between the site filled and the Caherlesk Stream.
B) details for the provision of silt fencing shall be submitted to and agreed in writing with the Planning Authority within 1 month from the grant of permission.

Reason: In order to protect receiving waters.

4. The development shall be retained and operated in accordance with the requirements of the European Communities (Good Agriculture Practice of Waters) Regulations, 2022 and/or any relevant enacted subsequent to the 2022 Regulations.

Reason: To ensure that the development accords with recognised best agricultural practices and protect surface/ground waters.

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.

Jennifer McQuaid
Planning Inspector

20th November 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-319463-24		
Proposed Development Summary	Retention of imported inert material from a slatted shed excavation elsewhere on the farm holding. For land reclamation works involving raising existing ground levels by c0.8m and associated works.		
Development Address	Mallardstown Great, Kells, Co. Kilkenny		
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	X
		No	
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?			
Yes			EIA Mandatory EIAR required
No	X		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)
No			
Yes		Class 11(b) installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this schedule. Or	Proceed to Q.4

		Class 15 Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development, but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.		
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4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: _____

Form 2
EIA Preliminary Examination

An Bord Pleanála Case Reference Number	ABP- 319463-24
Proposed Development Summary	Retention of imported inert material from a slatted shed excavation elsewhere on the farm holding. For land reclamation works involving raising existing ground levels by c0.8m and associated works.
Development Address	Mallardstown Great, Kells, Co. Kilkenny
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
<p>Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The development has a modest footprint with an area of 0.301ha and infill of inert material of 1915m³. The retention infilling will raise the ground level by c.0.8m and comes forward as a standalone project, does not require demolition works, does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.</p>
<p>Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>The development is situated in a rural area on improved agricultural land which is abundant in the area. The development is removed from sensitive natural habitats, centres of population and designated sites and landscapes of identified significance in the County Development Plan.</p> <p>The site is adjacent a stream, which flows in the King's River (River Barrow and River Nore SAC/River Nore SPA) approximately 1.35km north of the site. The stream located within an area identified on the OPW flooding maps as an area of "National Indicative Fluvial Flooding". The site is not identified on the CFRAM maps or identified as</p>

		having a low, medium and high risk of flooding (Flood zones A, B and C).
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).		Having regard to the modest nature of the development, its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	No

Inspector:

Date:

DP/ADP:

(only where Schedule 7A information or EIAR required)

Date:

Appendix 2

Screening Determination

1.0 Compliance with Article 6(3) of the Habitats Directive

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.

1.2 Background on the Application

The applicant has submitted a screening report for Appropriate Assessment as part of the planning application carried out by Dr. Jane Russell O'Connor, qualified ecologist from Russell Environmental and Sustainability Services Ltd (RESS Ltd) on 8th November 2023.

The applicant's Stage 1 AA Screening Report was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development.

The applicants AA Screening Report concluded that:

“This Stage 1 report has demonstrated that, the deposition of excavated material has no potential direct or indirect effect on the qualifying species or habitats of the European Site.

The River Barrow and River Nore SAC and River Nore SPA can be screened out and no further assessment is required.

This assessment has been undertaken on the basis of the best scientific knowledge in the field and the Precautionary Principle.”

In addition, Enviroguide carried out a survey on the 8th of November 2022, there was no evidence of siltation on the wetland area during the site visit which was during heavy rainfall. The water in the tributary that flows into the King's River (River Barrow and River Nore SAC/River Nore SPA) was also clear at the time of surveying.

An additional survey was carried out on 30th November 2023, two surface water sample collection were taken from the Caherlesk Stream at locations upstream and downstream of the site and in particular stockpile SP4 (located along the eastern

boundary of the site). The area between the Caherlesk Stream and the stockpile was observed to be heavily vegetated with a grass verge, mature hedgerows and treelines. The stockpile is located approximately 6.5m east of the Stream, the stream was inspected at locations upstream and downstream of the site and adjacent to the stockpile. The water was observed to run clear and there was no evidence of physical impacts to the river bank or siltation of the riverbed. The samples laboratory analytical report results were:

- The reported concentrations of dissolved metals at monitoring locations SW1 and SW2 were less than the laboratory limits of detection and/or less than the applicable SW EQS.
- The reported concentrations of ammoniacal nitrogen and BOD at monitoring locations SW1 and SW2 were also less than the laboratory limits of detection and/or less than the applicable SW EQS.
- The reported concentration of turbidity ranged from 0.6 Nephelometric Turbidity (NTU) to 2.9NTU. The results are indicative of clear water which is consistent with the findings of the site walkover survey.

Accordingly, there is no identified environmental risk associated with the chemical composition of the sampled surface water upstream and downstream of the site and all results are below the applicable surface water EQS.

Having reviewed the documents, 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.

1.3 Screening for Appropriate Assessment- Test of likely significant effects

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.

1.4 Brief description of the development

The applicant provides a description of the project on page 5 of the AA screening report.

In summary, the development comprises:

- Retention of imported inert material from a slatted shed excavation elsewhere on the farm holding.
- The existing ground level is raised by circa 0.8m
- The imported soils are located over 5m from the adjacent stream along the eastern boundary.

The development site is described in section 2.6 pages 8 to 11 of the AA Screening report. It is described as comprising 'predominantly of wet grassland GS4, which in places is very wet, especially following rainfall. The deposited excavated material is in four mounds that have been colonised by plants and is described as Recolonising bare ground ED3. The site is bound to the east by a stream which flows into the King's River which is part of the River Barrow and River Nore SAC, this is described as Depositing lowland river FW2. Adjacent to the stream are hedgerows/treelines and this is described as Hedgerows/Treeline WL1/WL2.

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:

- Potential risk of emissions from particulate matter during the deposition.

1.5 Submissions and Observations

Inland Fisheries Ireland made an observation to the Planning Authority and made the following request:

"Any further works or remedial measures must not permit any deleterious matter to reach surface water systems either directly or indirectly. There should be no interference with the bed, gradient, profile or alignment of watercourses on or adjacent to the site without the prior notification and agreement of Inland Fisheries Ireland. IFI also request that the existing riparian vegetation should be maintained and protected. Should alien invasive species as defined by the European

Communities (Birds and Natural Habitats) Regulations, SI 477 of 2011, be present on the site, then a plan should be implemented for their control and removal”.

1.6. European Sites

The development site is not located in or immediately adjacent to a European site. The closest European site River Barrow and River Nore SAC and River Nore SPA is 1.35km north of the proposed development.

A summary of European Sites that occur within a possible zone of influence of the proposed development is presented in the table below. Where a possible connection between the development and a European site has been identified, these sites are examined in more detail.

Table 1. Summary Table of European Sites within a possible zone of influence of the proposed development

European Site (code)	List of Qualifying interest/Special Conservation Interest	Distance from proposed development (KM)	Connections (Source, pathway, receptor)	Considered further in screening. Y/N
River Barrow and River Nore SAC (Site code: 002162)	<ul style="list-style-type: none"> -Estuaries -Mudflats and sandflats not covered by seawater at low tide -Reefs -Salicornia and other annuals colonising mud and sand -Atlantic salt meadows -Watercourses of plan to montane levels with the Ranunculus fluitans and Callitriche-Batrachion vegetation 	1.35km North	The site is adjacent to the Caherlesk Stream which flows into Kings River which is a tributary of River Barrow & River Nore	Y

	<ul style="list-style-type: none"> -European dry heaths -Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels -Petrifying springs with tufa formation -Old sessile oak woods with Ilex and Blechnum in the British Isles -Alluvial forests with Alnus glutinosa and Fraxinus excelsior -Desmoulin's Whorl Snail -Freshwater Pearl Mussel -White-clawed crayfish -Sea Lamprey -Brook Lamprey -River Lamprey -Twaite Shad -Salmon -Otter -Killarney Fern 			
River Nore SPA (site code: 004233)	-Kingfisher	1.35km North	The site is adjacent to the Caherlesk Stream which flows into Kings River which is a tributary of River Barrow & River Nore	Y
Lower River Suir SAC (site code: 002137)		11.85km Southwest	No hydrological connectivity and sufficient geographical separation.	N

Hugginstown Fen SAC (site code: 000404)		11.95km Southeast	No hydrological connectivity and sufficient geographical separation.	N
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1.7 Identification of likely effects

There are no direct significant threats to the European Sites. There is a potential indirect risk of surface rainwater runoff and storm water runoff into the stream that feeds into the King's River and thus the River Barrow and River Nore SAC and River Nore SPA from the deposited excavated inert material. However, the material has already been deposited in mounds which have become established by colonising vegetation, there is no anticipated risk. The closest mound is located over 5metres from the adjacent stream.

The material was transported to the site via existing farm tracks, therefore no impact to the European Sites. The depositing occurred over 2 days and there's no decommissioning involved.

There are no other developments in the area, therefore no cumulative impacts were identified.

There is not any anticipated loss, fragmentation, disruption or changes to the key elements of the European Site as they are not directly involved in the deposition of excavated material.

A summary of the outcomes of the screening process is provided in the screening matrix.

Screening Matrix				
European Site (Link to conservation objectives www.npws.ie)	Distance to proposed development/source , pathway receptor	Possible effect alone	In combination effects	Screening conclusions :
River Barrow and River Nore SAC National Parks & Wildlife Service	The site is adjacent to the Caherlesk Stream which flows into Kings River which is a tributary of River Barrow	No possibility of effects as the material	No effect	Screened out for need for AA

	& River Nore located 1.35km north.	has already been deposited in mounds which have become established by colonising vegetation and given the distance of 6.5m from the material to the stream, there is no anticipated risk.		
River Nore SPA National Parks & Wildlife Service	The site is adjacent to the Caherlesk Stream which flows into Kings River which is a tributary of River Barrow & River Nore located 1.35km north.	No possibility of effects as the material has already been deposited in mounds which have become established by colonising vegetation given the distance of 6.5m from the material to the stream, there is no anticipated risk.	No effect	Screened out for need for AA

1.8 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.

1.9 Screening Determination

1.10 Finding of no likely significant effect.

The retention 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 would not be likely to give rise to significant effects on European site River Barrow and River Nore SAC or River Nore SPA, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment is not therefore required.

This determination is based on the following:

- No surface water run off as the deposited material is in four mounds that have become established by colonising vegetation.
- Distance of 6.5metre from the stockpile to the stream
- Site survey on 8th November 2022, no evidence of siltation on the wetland area during the site visit which was during heavy rainfall. The water in the tributary that flows into the King's River (River Barrow and River Nore SAC/River Nore SPA) was also clear at the time of surveying.
- An additional survey was carried out on 30th November 2023, two surface water sample collection were taken from the Caherlesk Stream at locations upstream and downstream of the site and in particular stockpile SP4 (located along the eastern boundary of the site). The water was observed to run clear and there was no evidence of physical impacts to the river bank or siltation of the riverbed. The samples laboratory analytical report results were:
 - o The reported concentrations of dissolved metals at monitoring locations SW1 and SW2 were less than the laboratory limits of detection and/or less than the applicable SW EQS.

- The reported concentrations of ammoniacal nitrogen and BOD at monitoring locations SW1 and SW2 were also less than the laboratory limits of detection and/or less than the applicable SW EQS.
- The reported concentration of turbidity ranged from 0.6 Nephelometric Turbidity (NTU) to 2.9NTU. The results are indicative of clear water which is consistent with the findings of the site walkover survey.

Inspector:

Date: