



An
Bord
Pleanála

Inspector's Report ABP 319561-24

Question

Whether the laying of a rising main between Ballynagran Landfill to Uisce Eireann connection point at Ballynerrin Upper along the local road L1113, crossing the M11 and along the R751, is or is not development and is or is not exempted development.

Location

Ballynagran Landfill, Coolbeg Cross and Ballynerrin Upper, County Wicklow.

Declaration

Planning Authority

Wicklow County Council.

Planning Authority Reg. Ref.

EX 17/2024.

Applicant for Declaration

Ballynagran Landfill Ltd.

Planning Authority Decision

Is development and is not exempted development.

Referral

Referred by

Ballynagran Landfill Ltd.

Owner/ Occupier	Damien Holmes, Ballynagran Landfill, Coolbeg Cross, County Wicklow (Landfill facility).
Observer(s)	None.
Date of Site Inspection	5 February 2025.
Inspector	B. Wyse

1.0 Site Location and Description

- 1.1. The lands in question are located a short distance south west of Wicklow Town. The Ballynagran Landfill facility is located at Coolbeg Cross just west of the M11, Junction 18. The route for the rising main commences at the connection point in the landfill facility. It emerges first onto local road L1113 and proceeds eastwards to the motorway junction. It runs across the junction overbridge and then follows the R751 eastwards and north eastwards to Ballynerrin Upper and the Uisce Eireann connection point on the outskirts of Wicklow Town. The route is approximately 4kms in length.

2.0 The Question

- 2.1. The question as originally put to Wicklow County Council was set out as follows:

We would like to seek confirmation that laying a rising main between Ballynagran Landfill and the Uisce Eireann (UE) connection point is exempt under Class 48 of the Planning and Development Regulations as it is the connection of a premises to a sewer.

- 2.2. Wicklow County Council rephrased the question as follows:

Whether the laying of rising main between Ballynagran Landfill to Uisce Eireann connection point at Ballynerrin Upper, along the local road L1113, crossing the N11 and R751 is or is not exempted development.

- 2.3. The question can more correctly be stated as follows:

Whether the laying of a rising main between Ballynagran Landfill, Coolbeg Cross to the Uisce Eireann connection point at Ballynerrin Upper, all in County Wicklow, along the local road L1113, crossing the M11 and along the R751 is or is not development or is or is not exempted development.

- 2.4. Information provided with the application included:

A drawing of the pipeline route.

The pipe crossing the M11 would use an existing pipe corridor in the overbridge.

A connection agreement with Uisce Eireann has been signed and a connection offer has been received.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority decided that the said rising main is development and is not exempted development.

The declaration as set out includes the following:

Having regard to:

- *Planning History PL27.131213 (PRR 01/5285), PRR 20/21, PRR 12/6581, PRR 08/1209.*
- *EX 40/2023.*
- *Wicklow Town-Rathnew Development Plan 2013-2019.*
- *Section 2,3 and 4 of the Planning and Development Act 2000 (as amended).*
- *Article 6, 9 and Schedule 2: Part 2: Class 48 and Class 54 of the Planning and Development Regulations 2001 (as amended).*

Main Reasons with respect to Section 5 Declaration:

- *The laying of a rising main would come within the definition of works and is, therefore, development having regard to Section 3 of the Planning and Development Act 2000 (as amended).*
- *Having regard to*
 - i. The extent and type of the works i.e. the construction/excavation and laying of a sewer underground for over 3.7km,*
 - ii. The location of the works mainly within the rural area and outside the development boundary of Wicklow Town,*
 - iii. The definition of street i.e. a public road that is usually lined with buildings (Collins Dictionary),*
 - iv. Classes 58 and 48.....*

it is considered that the scale and type of the works proposed would not come within the description set out under Class 48 and, therefore, the works would not be exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for planning authority decision. Includes:

- Facilitating the laying of the rising main would require works including the excavation of trenches, laying of rising main within the excavated trench, filling in and relaying of the public road finish.
- By reference to Class 48 a street as defined (Collins Dictionary) is usually lined with buildings and thus is clearly identifiable as urban in nature. The context is clearly for connections within the urban setting which would be logical as such services would mainly be within existing agglomerations.
- This consideration is further supported by the specific exemption for Irish Water (Uisce Eireann) under Class 58.

3.2.2. Other Technical Reports

None.

4.0 Planning History

PA Ref. PRR 01/5285, ABP Ref. 27.131213

This is the original, 2003, grant of permission for the Ballynagran landfill facility. The permission provided for a development life of 15 years.

PA Ref. PRR 08/1209

This is a 2008 permission for a new security kiosk at the landfill facility and a refusal of permission to remove a restriction imposed on permission PA Ref. PRR 01/5285, ABP Ref. 27.132213 in relation to the origin of waste to be accepted at the facility.

PA Ref. PRR 12/6581

This is a 2012 permission to increase the infrastructure at the landfill gas utilisation plant.

PA Ref. PRR 20/21

This is a 2020 permission to extend the appropriate period of PA Ref. PRR 01/5285, ABP Ref. 27.131213 for a further 5 years.

PA Ref. EX40/2023

This is a 2023 Declaration that the addition of a pre-fabricated, containerised pump skid located on an existing concrete plinth and laying of rising main between the pump skid property boundary to connect to sewer is development and is not exempted development.

5.0 Policy Context

5.1. Development Plan

The Ballynagran landfill facility and the bulk of the route for the rising main is located within the area covered by the Wicklow County Development Plan 2022-2028.

No relevant policies or objectives.

5.2. Natural Heritage Designations

See Section 8.4 below.

6.0 The Referral

6.1. Referrer's Case

Documentation submitted includes:

- 1) Cover letter
- 2) Project Overview Report
- 3) Drawings
- 4) Appropriate Assessment Screening Report

The cover letter sets out the referrer's case that the laying of the rising main is exempted development. It includes:

- The pipeline will be approximately 4kms in length and will run in the public road and verge, where possible. The pipeline will carry leachate from the landfill site.
- It is acknowledged that the works constitute development.
- The proposal falls under Class 48 as it clearly provides for the opening of both any street or other land for that purpose. The planning authority declaration fails to refer to the latter. The planning authority Planners Report incorrectly interprets Class 48 as only applicable to an urban street and not providing for such works in a rural area.

- There are no relevant Article 9 restrictions on exempted development. Article 9(1)(a)(viiB) is addressed in the appropriate assessment screening report – see below.
- If the logic of the Planners Report was applied across the country the effect would be that all such connections in rural areas would require planning permission.
- The works proposed are subject to a self-lay agreement and are identical to those described under Class 58, the only difference being that Class 58 relates to Uisce Eireann (Irish Water).
- The self-lay connection agreement with Uisce Eireann provides for the works to be carried out under Section 41 of the Water Services Act. Such agreements are dependent on the works being exempted development under the Planning Regulations.

The Project Overview Report includes:

- The connection point is a standoff manhole on the R751 at Ballynerrin Upper, approximately 6m from the existing sewer network. Ongoing discussions with Uisce Eireann will ensure the connection meets their requirements.
- There is ongoing discussion with Transport Infrastructure Ireland (TII) regarding the M11 crossing. There is an existing pipe corridor under the footpath in the bridge deck with an existing unused pipe terminating either side of the bridge. At this stage it is expected trenchless techniques will not be required under the M11.
- The pipeline will remain the responsibility of Ballynagran Landfill Ltd and will not be vested in Uisce Eireann.
- The rising main will be of polyethylene material in accordance with the Irish Water Code of Practice.
- The pipe will be 110mm in diameter and will be laid in a trench approximately 500mm wide by 1m deep.

The Appropriate Assessment Screening Report concludes that the project would not be likely to have a significant effect on any European Site.

6.2. Planning Authority Response

Includes:

- Not all proposed development comes within the scope of an exemption class just because it is the same type of development that is described for the class. This is illustrated in the Board's decision under ABP Ref. RL2076 which, in effect, states that the scale of development has to be considered when considering an exemption class.
- In prescribing Class 58 as an exemption, the Legislature had regard to the fact that Uisce Eireann, as a statutory undertaker, would require a specific exemption to cover likely works which could be of a much bigger scale and type (e.g. trunk sewers, etc as opposed to a mere connection) than envisaged for the connection of a premises to an existing sewer. This supports the planning authority consideration that the Class 48 exemption does not apply to sewer connection works of a different scale but to a relatively simple small connection to an existing sewer that is on a public road in close proximity to the premises to be connected.
- The Class 48 exemption would mainly apply to serviced areas. It would infrequently apply to rural areas and would mainly apply to urban/built up areas. This is not saying that on the unusual occasion when a sewer passes the entrance to a premises located in a rural area that Class 48 would not apply
- Any agreement with Uisce Eireann via connection agreements does not result in proposed development being development proposed by Uisce Eireann.

6.3. Further Responses

The Board referred the referral to Uisce Eireann but no response has been received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) *'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...*

Section 3(1)(a) *'development' means the carrying out of any works in, on, over or under land, or the making of any material change in the use of land or structures situated on land.*

7.2. Planning and Development Regulations, 2001

Article 6(1) provides that, subject to Article 9, certain classes of development specified in column 1, Part 1 (Exempted Development – General), Schedule 2 shall be exempted development.

The relevant classes of development are:

Miscellaneous

Class 48

The connection of any premises to a wired broadcast relay service, sewer, watermain, gas main or electricity supply line or cable, including the breaking open of any street or other land for that purpose.

Limitations – none.

Class 58

Development by Irish Water, for the purpose of the provision of water services, consisting of one or more of the following:

(b) the installation of either or both – (i) underground pipes, cables, water mains, sewers, including associated accessories, service connections, boundary boxes and meters

Limitations – none relevant.

Article 9(1) includes the following restriction on Article 6 exemptions:

If the carrying out of such development would –

(a)(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

7.3. Precedent Referral cases

ABP Refs. RL2778/ 3408/ 3409/ 3410/ 3411/ 3436/ 3503/ 3482 and 307454 and 308071

These cases, dating from 2011 to 2021, all refer to predominantly underground electricity grid connections to renewable energy projects, mostly wind farms and one solar farm. In all but one of the cases the Board deemed the connection to be exempted development. In the one exception (Case Ref. RL3482) it was determined that appropriate assessment was required, so de-exempting the development. Many of the grid connections in these cases were over distances greatly in excess of the distance in the subject case.

Case Refs. RL3408/3409/3410/3411/3436/3482 also considered the issue of the status of the developer, whether an undertaker or statutory undertaker under the terms of the legislation. They clarified the broad scope of these terms in the current legislation.

ABP Ref. RL2293

This is a 2006 case where the Board decided, amongst other matters, that waste pipe connections were exempted development as the developer, Shell E&P Ireland Ltd, was deemed to be a gas undertaking under the terms of the legislation.

ABP Ref. RL2076

This is the case referenced in the planning authority response submission. It refers to a 2004 decision of the board that the laying out and use of a field as a hard surface area for sports and recreational use was development and was not exempted development. It was considered that the development did not come within the scope of Class 33(c). Part 1, Schedule 2 of the Regulations due to the extent of the works, raising and lowering of ground levels and the importation of large quantities of fill materials.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The laying of the rising main as described clearly constitutes works and is, therefore, development for the purposes of the Act and there is no dispute in relation to this matter.

8.2. Is or is not exempted development

- 8.2.1. There is no relevant exemption under the Act for the development in question.
- 8.2.2. There is agreement amongst the parties that the development falls to be considered by reference to Class 48 under the Regulations and I concur with this position.
- 8.2.3. The decision of the planning authority that the development does not fall within the scope of that class is based on arguments related to:
- The extent and type of the works.
 - The location of the works, including the definition of ‘street’ referred to in the class.
 - The status of the developer and the provisions of Class 58 of the Regulations in relation to Irish Water (Uisce Eireann).
- 8.2.4. In relation to the extent and type of works the planning authority’s essential point is that the works are too extensive and of too big a scale to be considered to fall within the terms of Class 48. In this the planning authority reference ABP Ref. RL2076 (See Section 7.3 above) wherein the Board considered the scale and extent of the works in interpreting the meaning of Class 33(c) of the Regulations. I do not accept the analogy being drawn here. Class 33(c) uses the term ‘the laying outof land...’ which is clearly open to interpretation. As the Inspector indicated it could be interpreted to cover only the marking out of a field, at one end of the spectrum, and in which case the exemption was considered to be virtually worthless, to the carrying out of extensive ground works, including site levelling and drainage works, at the other. It was necessary, therefore, for the Board in that instance to reach a reasoned view as to what this should be considered to mean. There is no such ambiguity in Class 48 – the terms of the class are clear and readily understandable. It refers to

‘the connection of any premises to a ...sewer..., including the breaking open of any street or other land for that purpose’.

- 8.2.5. It is further the case, in my view, and contrary to the position of the planning authority, that the works in this instance are relatively minor in scope. The referrer advises that the pipe in question would be 110mm in diameter and that the trench would be about 1m deep and 0.5m wide. This is comparable to the electricity grid connections the subject of the various cases referenced at Section 7.3 above. And as indicated many of these grid connections would have been over much longer distances than the 3.7 or 4kms envisaged in this case. Class 48 does not place any restriction or limitation on the size or length of the connection.
- 8.2.6. In relation to the location issue I agree with the referrer that the planning authority have ignored the reference in the class to ‘other land’ and focussed entirely on the reference to ‘street’. This undermines their position that the class essentially refers only to urban areas, although noting that they do accept that it might apply to rural areas on some unusual occasions. I see no basis to conclude that the class should not generally apply to rural areas as well as urban areas.
- 8.2.7. In relation to the status of the developer and Class 58 the planning authority is drawing the conclusion that the latter, which refers specifically to Irish Water (Uisce Eireann), means that Class 48 must be interpreted as referring only to small scale connections to sewers on public roads in close proximity to the premises to be connected. In my view there is no basis for such a contention. Firstly, Class 48 says no such thing. Secondly, and noting the planning authority’s reference to Uisce Eireann as a statutory authority, there seems to be an inference here that such authorities require special treatment over and above what might be afforded to other actors in the development process because they are likely to be carrying out works at a larger scale. As referenced at Section 7.3 above, in relation to Case Refs. RL3408/3409/3410/3411/3436/3482, the concept of an undertaker or statutory undertaker is much broader under current legislation than was previously understood. This is most likely as a consequence of the liberalisation of markets in the provision of services and infrastructure so that many different actors now carry out such developments, not just public undertakings. In the cases referenced here the developers of the grid connection infrastructure were the wind/solar farm

developers and, as indicated, these connections were much larger in scale than the subject development.

- 8.2.8. I conclude that the subject development falls within the scope of Class 48. At first instance, therefore, the development is exempted development under Article 6(1) of the Regulations.

8.3. Restrictions on exempted development

- 8.3.1. As indicated Article 6 exemptions are subject to Article 9 restrictions on exemption where relevant. The relevant restriction in this case is Article 9(a)(viiB) which overrides any exemption under Article 6 if the development in question requires appropriate assessment (see Section 7.2 above). The Board must determine the issue by carrying out a screening for appropriate assessment.

8.4. Appropriate Assessment Screening

Introduction

- 8.4.1. As indicated the referrer's documentation includes an appropriate assessment screening report. The report concludes that the project would not be likely to have a significant effect on any European site. The planning authority did not carry out appropriate assessment screening.

Subject Development

- 8.4.2. By reference to the screening report and other information on file the subject development comprises:
- The laying of a rising main (sewer pipeline) from the Ballynagran Landfill facility to an Uisce Eireann connection point at Ballynerrin Upper on the sewer network for Wicklow Town, a distance of approximately 4kms.
 - The pipeline would carry leachate from the landfill for treatment.
 - The pipeline would commence at the connection point in the landfill facility. It will emerge first onto local road L1113. It will run eastwards to the nearby motorway junction (M11, Junction 18), crossing via the overbridge and continuing along the R751 regional road to Ballynerrin Upper.

- The pipeline will run in the public road and verge, where possible. The crossing of the overbridge on the M11 would be most likely through an existing pipe corridor.
- The pipe would be 110mm in diameter and be buried to a depth of approximately 1.2m. The trench would be typically about 1.2m deep and 0.5m wide. Horizontal directional drilling to be used where possible, open-cut otherwise. The pipe would be made of polyethylene material in accordance with the Irish Water Code of Practice.
- There are three river/stream crossings on the route, one at Ballynagran Landfill, one at Coolbeg 10 and one at Woolaghans Bridge, the latter two on the R751. The screening report indicates that surface water is only visible at the Ballynagran crossing and at Woolaghans Bridge. The Ballynagran site will be bridged using an existing pipe corridor and the pipe will be buried in the bridge structure at Woolaghans Bridge.
- The contractors compound will be set up within the landfill facility site. Works along the route will be completed in small sections.
- The works proposed are the subject of a self-lay agreement with Uisce Eireann which provides that they be carried out under Section 41 of the Water Services Act. The pipeline will remain the responsibility of Ballynagran Landfill Ltd.

European Sites

- 8.4.3. The development is not connected to or necessary for the management of a European site.
- 8.4.4. The development is not located within or immediately adjacent to any European site.
- 8.4.5. The screening report considers all European sites within a 15kms radius of the development site (Table 3.1 of the report). These comprise seven SACs and two SPAs located between 2.8kms and 6.5kms from the nearest points of the development site.

Likely Significant Effects

- 8.4.6. The report concludes that there is no potential for significant impacts on any of these sites. I note, in particular, the references to: no hydrological connections; the absence of any proposed in-stream works; the use of existing pipe corridors and existing bridge structures over any water crossings; the limited scope of works undertaken at any one time; and the use of existing road infrastructure for the development.
- 8.4.7. The report also concludes that there is no potential for in-combination impacts. In this regard I note the references in the report to previous EPA appropriate assessment screenings in relation to the landfill facility and which screened out the need for appropriate assessment.
- 8.4.8. Given the relatively minor nature of the proposed development within existing road infrastructure, I concur with these conclusions.

Conclusion

- 8.4.9. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this appropriate assessment screening, I conclude that the subject development, individually or in-combination with other plans or projects, would not be likely to give rise to significant effects on any European Site. Appropriate assessment is not required.
- 8.4.10. This determination is based on:
- The minor nature of the development within existing road infrastructure;
 - The absence of any hydrological connections to any European site.

8.5. Referral Conclusion

- 8.5.1. I conclude that the said laying of a rising main is development and is exempted development.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the laying of a rising main between Ballynagran Landfill, Coolbeg Cross to the Uisce Eireann connection point at Ballynerrin Upper, all in County Wicklow, along local road L1113, crossing the M11 and along the R751 is or is not development or is or is not exempted development;

AND WHEREAS Ballynagran Landfill Landfill Ltd. requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 21st day of March, 2024 stating that the matter was development and was not exempted development;

AND WHEREAS Ballynagran Landfill Ltd referred this declaration for review to An Bord Pleanála on the 17th day of April, 2024;

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 48 and 58, Parts 1, of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) Article 9(1) (a)(viiB) of the Planning and Development Regulations 2001, as amended,
- (e) The documentation on file and the report of the Planning Inspector;

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The laying of the rising main constitutes development;

- (b) The laying of the rising main falls within the scope of Class 48, Part 1, Schedule 2 of the Regulations and there are no relevant limitations;
- (c) There is no requirement for appropriate assessment so that the restriction on exemption under Article 9(1)(a)(viiB) of the Regulations does not apply.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the laying of a rising main between Ballynagran Landfill, Coolbeg Cross to Uisce Eireann connection point at Ballynerrin Upper, all in County Wicklow, along the local road L1113, crossing the M11 and along the R751 is development and is exempted development.

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.

B. Wyse
Planning Inspector

12 February 2025