



An
Coimisiún
Pleanála

Inspector's Report

PL-501402-OY-26

Development

Levelling of agricultural lands by the importation of clean, uncontaminated soil and stone materials under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended. An Article 6(3) of the Habitats Directive Screening for Appropriate Assessment Report has been prepared in respect of the proposed development.

Location

Ballykilleen, Shean, Edenderry, Co. Offaly.

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

2582

Applicant(s)

Anthony Cocoman

Type of Application

Permission

Planning Authority Decision

Grant subject to conditions

Type of Appeal

First Party v. Conditions

Appellant(s) Anthony Cocoman

Observer(s) None.

Date of Site Inspection None required.

Inspector Robert Speer

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	6
3.4. Third Party Observations	7
4.0 Planning History	7
5.0 Policy Context	8
5.1. Local Policy	8
5.2. Natural Heritage Designations	12
6.0 EIA Screening	13
7.0 The Appeal	14
7.1. Grounds of Appeal	14
7.2. Planning Authority Response	19
7.3. Observations	21
7.4. Further Responses	21
8.0 Assessment	21
9.0 AA Screening	25
10.0 Water Framework Directive	26
11.0 Recommendation	27

Appendix 1: EIA Pre-Screening

Appendix 2: WFD Screening

1.0 Site Location and Description

- 1.1. The proposed development site is located in the rural townland of Ballykilleen, Shean, Edenderry, Co. Offaly, approximately 4.3km to the south of the town of Edenderry and c. 900m to the north of the Edenderry Power Plant, in an area characterised by a low-lying topography and dominated by a mix of agricultural land, forestry, cutover peatland, and renewable energy development, including the Cloncreen and Cushaling wind farms. It has a stated site area of 1.33 hectares, is irregularly shaped, and comprises an agricultural field set as grassland which is bounded by a combination of hedgerow, treelines, and post & wire fencing, and used as pasture for animal grazing. Access to the site is obtained directly from the adjacent R401 Regional Road via an existing field gate. The site is bounded by the public road to the southeast with agricultural lands to the north and commercial forestry to the west. A one and a half storey dwelling house adjoins the site to the southeast while the adjacent lands to immediate east & northeast are presently the subject of infilling operations (utilising clean, uncontaminated soil and stones) and ancillary activities (pursuant to a Waste Facility Permit).

2.0 Proposed Development

- 2.1. The proposed development consists of the importation of up to 24,582 No. tonnes of clean, uncontaminated soil and stone under permit and as a byproduct under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended, for the purposes of raising ground levels and the agricultural improvement of the land. It will include for the re-grading and levelling of the site to achieve a finished ground level of 68.5mOD. The material will be deposited over a two-year period with the work undertaken on a phased basis. It is anticipated that the annual intake will be 12,291m³ which will generate approximately 780 - 1,040 No. loads per annum or c. 15 - 20 No. loads per week on average (although it is expected that this will fluctuate depending on the level of activity and the availability of source material). Final site restoration will involve topsoiling followed by tilling and seeding of the land with grass and / or crops similar to those planted on adjacent lands over a 6-month period. Access to the development site will be through the adjacent waste facility / infilling activity retained by the applicant via the existing entrance arrangement serving that

operation. Ancillary site development works include the provision of a wheelwash and landscaping along site boundaries.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Following the receipt of a response to a request for further information, on 27th April, 2026 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 11 No. conditions. These conditions are generally of a standardised format whilst Condition No. 11 (the subject of this appeal) states the following:

3.1.2. *Condition No. 11:*

Prior to commencement of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company, or such other security, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the Planning Authority to apply such security or part thereof to the satisfactory reinstatement of the public road. The form and amount of the security shall be as agreed between the Planning Authority and the developer or, in default of agreement, shall be referred to An Coimisiún Pleanála for determination.

Reason: In the interest of traffic safety and the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

An initial report details the site location, planning history, and the applicable policy considerations before analysing the merits of the proposal. Reference is made to Development Management Standard Nos. DMS-115: '*Waste Recovery / Deposition Sites*' & DMS-116: '*Land Reclamation / Drainage of Wetlands*' of the Offaly County Development Plan, 2021-2027 and the need for the applicant to submit additional

details in order for the Planning Authority to establish whether the proposal is fully compliant with those standards. It subsequently states that further information is also required as regards the phasing and timeframe for the proposed works as well as the final site restoration, including detailed landscaping proposals for when the land improvement works have concluded. The report proceeds to raise concerns as regards the cumulative impact of the proposed development when taken in conjunction with the waste facility / infilling activity permitted on the adjoining lands under PA Ref. No. 16/177 and recommends that the applicant be requested to submit the information specified in Schedule 7A of the Planning and Development Regulations, 2001, as amended, for the purposes of screening the proposed development for environmental impact assessment. A screening exercise for the purposes of appropriate assessment has concluded that there is no likelihood of significant effects on a European Site. The report thus concludes by recommending that further information be sought in relation to the information specified in Schedule 7A of the Regulations, landscaping & boundary treatment, and the submission of a comprehensive site management plan (including details of the phasing of works, site restoration, and aftercare)

Following the receipt of a response to a request for further information, a final report was prepared which recommended a grant of permission, subject to conditions.

3.2.2. Other Technical Reports

Edenderry Area Office (Area Engineer): An initial report recommended that the applicant be requested to submit details of a wheelwash facility for all vehicles leaving the development site. Following the receipt of a response to a request for further information, a final report was prepared which stated that there was no objection to the proposed development, subject to conditions.

Environment & Water Services: No objection, subject to conditions.

3.3. Prescribed Bodies

3.3.1. None received.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. On Site:

4.1.1. ACP Ref. No. ACP-323980-25. Application by Uisce Éireann for a Proposed Water Supply Project for the Eastern and Midlands Region in the counties of Clare, Limerick, Tipperary, Offaly, Kildare, and Dublin. No decision to date.

4.1.2. PA Ref. No. DEC25/13. Was determined pursuant to Section 5 of the Planning and Development Act, 2000, as amended, that the levelling of agricultural lands by the importation of soil and stone materials under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended, was development which was not exempted development.

4.2. On Adjacent Sites:

4.2.1. *(to the immediate northeast):*

PA Ref. No. 16177. Was granted on 12th December, 2016 permitting Anthony Cocoman permission for the infilling of lands with material consisting of clean, uncontaminated soil and stones and for the crushing of concrete on a sporadic basis (which is not infilling on the site) prior to its removal for reuse. One temporary on-site portable toilet and one temporary portacabin which will serve as an office for the duration of the infilling process. A Natura Impact Statement (NIS) and Article 6(3) of the Habitats Directive Screening for Appropriate Assessment Report have been prepared in respect of the proposed development. Subsequent to planning a Waste Facility Permit will be sought from Offaly County Council Environment Section for the duration of the infilling process. All at Shean, Edenderry, Co. Offaly.

- PA Ref. No. EX/21010. Was granted on 20th February, 2021 permitting Anthony Cocoman an 'Extension of Duration' of PA Ref. No. 16177 until 21st March, 2027.

4.2.2. *(to the immediate southwest):*

PA Ref. No. 16346. Was granted on 20th February, 2017 permitting Derek Kearney permission for a change of house design to include revisions to floor plans and elevations from that granted under Planning Permission Reference PL2/14/3 at Ballykilleen, Edenderry, Co. Offaly.

PA Ref. No. 143. Was granted on 29th July, 2014 permitting Derek Kearney permission for (a) erection of a storey and a half / dormer type house, (b) garage / fuel store for domestic use and (c) the installation of a proprietary wastewater treatment system and percolation area at Ballykilleen, Edenderry, Co. Offaly.

5.0 Policy Context

5.1. Local Policy

5.1.1. ***Offaly County Development Plan, 2021-2027:***

Chapter 4: Biodiversity and Landscape:

Section 4.14: *Landscape:*

Section 4.14.1: *Landscape Sensitivity:*

Table 4.18: *'Low Sensitivity Areas in County Offaly':*

LOW SENSITIVITY AREAS

Low sensitivity areas are robust landscapes which are tolerant to change, such as the county's main urban and farming areas, which have the ability to accommodate development.

Characteristics:

County Offaly is largely a rural county which comprises of a predominantly flat and undulating agricultural landscape coupled with a peatland landscape. Field boundaries, particularly along roadside verges which are primarily composed of mature hedgerows typify the county's rural landscape.

Sensitivities:

- These areas in general can absorb quite effectively, appropriately designed and located development in all categories (including:

telecommunication masts and wind energy installations, afforestation and agricultural structures).

- Within the rural areas, development shall be screened by appropriate natural boundaries that are sympathetic to the landscape generally, where possible.
- New housing proposed in rural areas should respect Offaly County Councils Rural Housing Design Guidelines, together with conformity with development standards.

Acceptability of Development for consideration: A wide range of development subject to appropriateness / conditions

Need for Landscaping and Appropriate Design: High.

Section 4.16: *Biodiversity and Landscape Policies:*

BLP-38: It is Council policy to protect and enhance the county's landscape, by ensuring that development retains, protects and where necessary, enhances the appearance and character of the county's existing landscape.

BLP-40: It is Council policy to ensure that consideration of landscape sensitivity is an important factor in determining development uses.

Section 4.17: *Biodiversity and Landscape Objectives:*

BLO-24: It is an objective of the Council to have regard to the Landscape Sensitivity Areas in Tables 4.18, 4.19 and 4.20 in the consideration of planning applications.

Chapter 5: Economic Development Strategy

Section 5.7: *Rural Economic Strategy:*

Section 5.7.1: *Agriculture, Agri-Food, Agri-Tech, Food and Beverage*

Section 5.11: *Rural Economic Development Policies:*

REDP-04: It is Council policy to support the development of agriculture where it is compatible with the sustainable development of the county and commensurate with sustaining the farming community.

REDP-05: It is Council policy to ensure that agricultural developments are designed and constructed in a manner that will ensure that groundwater watercourses and sources of potable water are protected from the threat of pollution in line with Water Quality Regulations and the requirements of the Water Framework Directive.

Section 5.12: Rural Economic Development Objectives:

REDO-03: It is an objective of the Council to support agricultural development and encourage the continuation of agriculture as a contributory means of maintaining population in the rural area and sustaining the rural economy.

REDO-04: It is an objective of the Council to ensure that all agricultural activities adhere to any legislation on water quality and biodiversity, for example, Phosphorus Regulations, Water Framework Directive, Nitrates Directive and Habitats Directive.

Chapter 13: Development Management Standards:

Section 13.9.15: Waste Management:

DMS-115: 'Waste Recovery / Disposition Sites':

Planning applications for waste related facilities shall:

- Ensure that the proposed development does not impact significantly upon Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Natural Heritage Areas (NHAs), sensitive landscape areas, visual amenity, geology, heritage or cultural value, or areas at risk of flooding;
- Detail the type, source and volume of waste material to be processed and its method of processing, including hours of operation and duration of permission sought;
- Phasing programme showing the development in layout drawings and site sectional drawings for each phase of development including the restoration of the site;
- Show by the submission of a Traffic and Transport Assessment indicating details of road access, sightlines / visibility, vehicle

turning manoeuvres, parking areas, pull-in areas, the number and types of vehicles which will frequent the site, the carrying loads of vehicles, and haul routes and that the roads infrastructure in the area can accommodate the proposed development;

- Submit evidence that the proposed development is in accordance with the requirements of the EU Water Framework Directive and associated River Basin Management Plans;
- Ensure that environmental emissions such as noise, fumes, odours, dust, grit, vibration and lighting, along with controls and monitoring of same are adequately mitigated and do not impact significantly upon residences in close proximity to the proposed development;
- Provide for adequate screening of the proposed development through the submission of detailed landscaping plans and boundary treatment proposals; and
- Ensure that sufficient detail is submitted in relation to restoration and remediation measures following cessation of the proposed development, including a timeframe for implementation and anticipated finished landform.

DMS-116: *‘Land Reclamation/Drainage of Wetlands’:*

The Planning Authority will have regard to the draft Guidance for Planning Authorities on Drainage and Reclamation of Wetlands, or any amendment to those regulations in relation to planning applications for land reclamation or drainage of wetlands.

In addition, planning applications for developments of this nature, will need to;

- Ensure that the proposed development does not impact significantly upon Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Natural Heritage Areas (NHAs), sensitive landscape areas, visual amenity, geology, heritage or cultural value, or areas at risk of flooding;
- Detail the overall and annual quantities of materials to be brought on the site in tonnes;

- Detail the nature of material including European Waste Catalogue (EWC) or List of Waste (LOW) codes all waste materials proposed for acceptance at the site;
- Provide a phasing programme showing the development in layout drawings and site sectional drawings for each phase of development including the restoration of the site; and
- Detail transportation impacts with particular reference to details of all haul routes, load size and trip movements.

Section 13.9.16: *Agricultural Development:*

DMS-120: 'Protection of amenities':

Proposed agricultural developments shall demonstrate that the proposal;

- Will not result in a detrimental impact on the amenity of residential dwellings outside of the applicants landholding in relation to noise, smell, pollution or visual amenities;
- Will not result in a pollution threat to sources of potable water, water courses, aquifers or ground water;
- Create a traffic hazard;
- Makes proper provision for disposal of liquid and solid waste; and
- Does not impact significantly upon Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Natural Heritage Areas (NHAs), Areas of High Amenity, Landscape Sensitivity Areas, Key Scenic Views and Prospects and Key Amenity Routes, sites of heritage or cultural value, or areas at risk of flooding.

5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Grand Canal Proposed Natural Heritage Area (Site Code: 002104), approximately 3.5km north of the site.

- The Long Derries, Edenderry Special Area of Conservation (Site Code: 000925), approximately 4.5km east-northeast of the site.
- The Long Derries, Edenderry Proposed Natural Heritage Area (Site Code: 000925), approximately 5km east-northeast of the site.
- The Black Castle Bog Natural Heritage Area (Site Code: 000570), approximately 6.8km northwest of the site.

6.0 EIA Screening

- 6.1. The proposed development consists of the importation of up to 24,582 No. tonnes (24,582m³) of clean, uncontaminated soil and stone under permit and as a byproduct under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended, for the purposes of raising ground levels and the agricultural improvement of land over a site area of 1.33 hectares. In this regard, the Commission's attention is drawn to the applicant's response to the request for further information received by the Planning Authority on 31st March, 2026 wherein it has been reiterated that the proposed development only involves the importation of uncontaminated soil and stone as a byproduct under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended, in compliance with the '*National By-Product Criteria for Greenfield Soil & Stone*' (Reference Number: BP-N002/2024) issued by the Environmental Protection Agency in 2024, to the effect that the material to be imported is not categorised as 'waste'. Accordingly, the proposed development does not fall within 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*' of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended.
- 6.2. By extension, given that the proposed development is a 'non-waste' activity, it is not cumulative in nature with the development authorised under PA Ref. No. 16/177 (in reference to the established waste operation permitted on the adjacent lands) and thus does not fall within Class 13. '*Changes, extensions, development and testing*' as follows:

a) Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:-

i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and

ii) result in an increase in size greater than –

- 25 per cent, or

- an amount equal to 50 per cent of the appropriate threshold,

whichever is the greater.

6.3. Therefore, the proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations, 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Please refer to Form 1 in Appendix 1 of this report.

7.0 The Appeal

7.1. Grounds of Appeal

- This appeal relates solely to the imposition of Condition No. 11 and does not seek to challenge the principle of the development of any other condition of the notification of the decision to grant permission. In this regard, it is submitted that Condition No. 11 is:
 - unreasonable;
 - inadequately justified;
 - excessively vague;
 - disproportionate;
 - unsupported by evidence; and
 - will result in the duplication of infrastructure-related financial obligations already imposed under Condition No. 10.

Condition No. 11 should be removed in its entirety, or alternatively, substantially amended and limited to a defined and proportionate requirement supported by evidence.

- Condition No. 11 requires the lodgement of a cash deposit, a bond of an insurance company, or such other security, to secure the reinstatement of public roads which may be damaged by the transport of materials to the development site, coupled with an agreement empowering the Planning Authority to apply such security or part thereof to the satisfactory reinstatement of the public road. In this respect, it is submitted that the attachment of Condition No. 11 serves to duplicate the infrastructure-related financial contribution already imposed by Condition No. 10 of the grant of permission which requires the payment of a development contribution pursuant to the Offaly County Council Development Contribution Scheme in respect of public infrastructure and facilities.
 - It is apparent that public roads and associated road infrastructure fall within the ordinary meaning of '*public infrastructure*' as per the Offaly County Council Development Contribution Scheme, 2026-2032 which defines the classes of public infrastructure and facilities that fall within its remit. More specifically, Section 4(c) of the Scheme refers to '*the provision of roads, car parks, car parking places, sewers, wastewater and water treatment facilities, service connections, water mains and flood relief work*' while Section 4(e) references '*the refurbishment, upgrading, enlargement or replacement of roads, carparks, car parking places, sewers, wastewater and water treatment facilities, service connections or water mains*'.

Therefore, given that the Planning Authority has already sought the payment of a financial contribution towards the provision of infrastructure under its Development Contribution Scheme by way of Condition No. 10, the inclusion of Condition No. 11 serves to impose a second separate infrastructure related financial burden relating to the public road network.

- The cumulative effect of Condition Nos. 10 & 11 gives rise to duplication and disproportionate financial liability in circumstances where no evidence

has been provided to demonstrate why the infrastructure contribution imposed under Condition No. 10 is inadequate.

- The Commission is referred to its determination of ABP Ref. No. ABP-301513-18 (which related to land reclamation works at Micknans town, Stamullen, Co. Meath) wherein it was determined that the imposition of a condition requiring the payment of special contribution towards roads rehabilitation works would amount to 'double-charging' given the effect of another condition which required the applicant to carry out a road condition survey of specified roads before and after the carrying out of the development and that they would be responsible for the restoration costs of the local road.

It is respectfully submitted that the principle established in the aforementioned case is directly relevant to the subject appeal.

- While Condition No. 11 is framed as a security / bond condition rather than an explicit special contribution, the practical effect is the imposition of an additional undefined road infrastructure liability over and above that already imposed under Condition No. 10.
- The duplication of financial liability as outlined is unreasonable and disproportionate in the circumstances of the subject case.
- The Planning Authority has failed to provide any evidential or quantified engineering justification for the imposition of Condition No. 11.
 - The report of the case planner does not include:
 - A pavement condition survey;
 - A structural road assessment;
 - A bridge assessment;
 - A quantified HGV impact analysis;
 - The projected road rehabilitation scheme;
 - An estimate of likely public expenditure; or
 - Any identified exceptional road infrastructure costs.

- The final report of the District Engineer has only recommended the attachment of conditions pertaining to standard road protection and traffic management measures which include the following:
 - Wheelwash facilities;
 - Sightline requirements;
 - Road cleanliness controls;
 - Drainage controls; and
 - The reinstatement of any damage caused during construction.

The report makes no quantified or evidence-based recommendation as regards a road bond, cash deposit, the amount of any security, or any exceptional road rehabilitation costs.

Therefore, the Planning Authority has failed to demonstrate the necessity, proportionality, or evidential basis for the imposition of Condition No. 11.

The condition thus fails the test of reasonableness and proper planning.

- Condition No. 11 is impermissibly vague and uncertain in that it fails to specify the financial amount; the calculation methodology; the engineering basis; any cap on the amount payable; the duration of the security sought; an assessment of the haul route; the identification of any roads requiring reinstatement; or objective criteria for determining liability. Instead, the condition simply states that *‘the form and amount of the security’* is to be agreed between the Planning Authority and the developer.

This lack of clarity creates an impermissibly vague and uncertain condition which improperly defers a substantive matter for future agreement. Moreover, it exposes the developer to an undefined and potentially unlimited financial liability incapable of being properly assessed at the permission stage.

The nature of any alleged future road damage, the extent of any reinstatement arising, the methodology for assessment, and the amount of security required, are all matters that should not be left undefined and open-ended.

The absence of objective parameters renders the condition unreasonable and uncertain in planning terms.

- The attachment of Condition No. 11 imposes a disproportionate cumulative burden given that the development is already subject to extensive road protection and operational controls, including restricted operating hours, the provision of a wheelwash, road, cleanliness obligations, drainage controls, and a requirement to remedy any damage caused during construction.

It is considered that the cumulative burden of the development contribution required, operational road protection measures, and the lodgement of additional undefined security for road reinstatement works, is excessive and disproportionate in circumstances where no exceptional infrastructure impact has been demonstrated.

- The Planning Authority has failed to identify any specific exceptional road rehabilitation costs, quantifiable infrastructural deficiency, or any extraordinary public expenditure resulting from the proposed development.

Condition No. 11 lacks the specificity and evidential basis required to justify the imposition of an additional financial burden beyond that imposed by the Development Contribution Scheme as already applied under Condition No. 10.

- By way of conclusion, Condition No. 11 duplicates the infrastructure-related financial obligations already imposed under Condition No. 10; lacks any evidential and engineering justification; is vague and uncertain; improperly defers substantive matters for future agreement; and imposes a disproportionate and undefined financial burden.

The Commission is requested to remove Condition No.11 in its entirety. Alternatively, in the event some form of road protection security is considered necessary, the condition should be:

- Substantially amended;
- Limited to clearly identified and evidence-based risks;
- Supported by objective engineering assessment:

- Proportionate to the scale of development; and
- Subject to a defined and reasonable cap.

7.2. Planning Authority Response

- Condition No. 11 holds the applicant accountable for any damages that the proposed operational activities cause to public infrastructure around the development. The imposition of a bond will allow for the reinstatement of public roads which may be damaged by the transport of materials to the site. Existing road assets proximate to the development are legacy pavements, mainly based on peat subgrades, which tend to require far more frequent strengthening / overlaying than non-legacy pavements (which are not based on peat subgrades). The bond outlined in Condition No. 11 is necessary for ensuring that the likely negative impacts on local roads caused by the additional HGV deliveries consequent on the development will be offset by contributing to the Local Authority's ability to provide a safe and functional road network.
- Specific exceptional costs can be foreseen as being incurred because of the granting of permission for the proposed development. In this regard, cognisance has been taken of the geographic location of the development in an area of high peat ground conditions while the surrounding road network is constructed upon a peat subgrade. The memorandum for 'Grants on Regional and Local Roads' issued by the Department of Transport outlines that, on average, a road with a fully designed pavement will need to be strengthened / overlaid every 20 No. years (a road with a legacy pavement will have a shorter lifespan). Given the fact that road assets around the development comprise legacy pavements, coupled with the fact that they are based on peat subgrades, support is lent to the case that pavement renewal around the locus tends to be required at much shorter intervals than 20 No. years, in some cases as proven, every 2 to 3 No. years. It is therefore evident that increased HGV traffic generated by the development will decrease an already shortened pavement lifespan. It is evident that exceptional costs will arise

attributed to the development utilising public infrastructure to access the development.

These likely exceptional costs are not covered by the Development Contribution Scheme (as applied by way of Condition No. 10 of the grant of permission) as the rates used are baseline and do not take into account the geographic location of the development in the peatlands or the performance of legacy pavements constructed above peat subgrades. While the Offaly County Council Development Contribution Scheme, 2026-2032 may make provision for impacts to road networks, these impacts are baseline and do not reflect the challenging conditions outlined above.

- The imposition of the bond sought by Condition No. 11 will benefit the permitted development as it will be utilised to renew the infrastructure leading directly to the development. In the absence of a bond, pavement renewals could not be carried out at such a frequency as to provide safe and functional road infrastructure to the development. In this respect, it is noted that the proposed development will generate between c. 1,440 and 1,920 No. HGV deliveries over a two-year period of operation (each in excess of 30 No. tonnes in weight) along road infrastructure constructed over peat. This will without doubt have a negative impact on road conditions in the vicinity and will also contribute to a reduced lifecycle for the roads in question.
- The assertion that Condition Nos. 10 and 11 give rise to a ‘*duplication of infrastructure-related financial contributions*’ is rejected.

Condition No. 10 states the following:

‘Prior to commencement of development, a contribution shall be payable to Offaly County Council, in accordance with the Council’s Development Contribution Scheme, in respect of public infrastructure and facilities benefitting development in County Offaly, that is provided or that is intended will be provided by, or on behalf of, the Council. The amount of the development contribution is set out below and is subject to annual revision with reference to the Wholesale Price Index (Building and Construction), and interest for late payment, in accordance with the terms of the Council’s Development Contribution Scheme, 2026-2032:-

Table 2 – Levels of Contributions – Other Categories of Development

C	Land use for: (a) the winning and / or working of minerals (b) deposit of refuse or waste (c) land filling (inert material)	€2,000 per 0.1 hectare of site area subject to a minimum charge of €15,000
---	---	--

Total – €2,000 x 1.33 HA = €26,600

Reason: It is considered reasonable that the developer should contribute towards the expenditure incurred or proposed to be incurred by Offaly County Council in respect of the provision / improvement of public services / infrastructure benefitting development in the area of the Planning Authority’.

The attachment of this condition as per Section 48 of the Planning and Development Act, 2000, as amended, provides for the levying of development contributions by local authorities. In the subject instance, the applicable development contribution was calculated based on the site area. Where the site area is <5 hectares (as in the subject case) development contributions must be paid in full prior to the commencement of development. Where the site is >5 hectares, payments may be made in a phased arrangement with the local authority. This is due to the nature of such developments where activity may be continuous throughout the lifetime of the permission.

7.3. Observations

None.

7.4. Further Responses

None.

8.0 Assessment

- 8.1. From my reading of the file and assessment of the relevant legislative and policy provisions, I conclude that the key issues raised by the appeal relate to the inclusion of Condition No. 11. Furthermore, in accordance with the provisions of Section 139

of the Planning and Development Act, 2000, as amended, I am satisfied that this appeal should relate only to the merits of the aforementioned condition.

- 8.2. From a review of the available information, in my opinion, it is of the utmost importance at the outset to emphasise the functional difference between a development contribution and a development bond / security. In the most basic of terms, a development contribution is essentially a monetary levy (typically non-refundable) imposed to partly fund the provision of essential public infrastructure, without which development could not proceed. Conversely, a development bond is a mechanism by which a means of security is lodged to secure the completion of a particular activity to the satisfaction of the Planning Authority, which is refundable or can otherwise be released on completion of the activity concerned.
- 8.3. A development bond / security is not intended to fund the ongoing maintenance of public infrastructure or services (such as the public road network) and in this regard I would have reservations that the explanation provided by the Planning Authority in response to the grounds of appeal as regards the imposition of the development bond sought by Condition No. 11 would seem to suggest that the bond / security is intended to fund the 'renewal' of infrastructure (i.e. the public road) serving the development as well as *'the Local Authority's ability to provide a safe and functional road network'*. In my opinion, any such usage is more akin to 'maintenance' and would not conform to the normal understanding of the purpose of a development bond / security. At this point, I would advise the Commission that the reports of the case planner do not elaborate on the need for the development bond and thus I am forced to revert to the reasoning set out in the aforementioned response to the grounds of appeal. Within that submission, a notable emphasis has been placed on *'specific exceptional costs'* consequent on the proposed development and that these *'likely exceptional costs'* are not covered by the Development Contribution Scheme, however, the use of such terminology would more typically be associated with the imposition of a special development contribution pursuant to Section 48(2)(c) of the Act which states that a planning authority may require the payment of a special contribution in respect of a particular development where *'specific exceptional costs'* not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development. Considering that a special development contribution towards road improvement works was not

deemed to be warranted in the subject instance, it is my view that any such justification for Condition No. 11 would lend further weighting to the proposition that the development bond / security sought is actually intended for purposes more akin to maintenance (which is the function of the development contribution sought by Condition No. 10). Accordingly, I am unconvinced by this aspect of the reasoning provided by the Planning Authority for the attachment of Condition No. 11.

- 8.4. Notwithstanding the foregoing, the case has also been made that the development bond / security is intended to ensure that the applicant / developer is held accountable for any damage to public infrastructure attributable to the proposed development and, more particularly, the reinstatement of public roads in the vicinity which may be damaged due to the haulage of materials to the development site. This would seem to form a reasonable basis for the imposition of Condition No. 11 and it is not uncommon for a bond / security to be sought in such circumstances. However, it is of relevance to note that the report of the Edenderry Area Office (Area Engineer) did not seek the lodgement of any form of security as regards the carrying out of future road repairs and instead sought to address the matter by simply specifying that *'any damage to the public road during construction of the development shall be made good to the satisfaction of the Area Office prior to the completion of the works'*. Indeed, this latter provision has been incorporated into Condition No. 6(c) of the notification of the decision to grant permission as issued by the Planning Authority. Accordingly, in light of the inclusion of Condition No. 6(c), which already obliges the developer to make good any damage to the public road, and which has not been appealed by the applicant, I am inclined to suggest that the development bond / security sought by Condition No. 11 is unnecessary. The Commission may also wish to consider the possibility that the repair of any damage to the public road consequent on the proposed development could also be resolved by way of the Construction and Environmental Management Plan (CEMP) to be agreed with the Planning Authority pursuant to Condition No. 5 of the grant of permission.
- 8.5. In addition to the foregoing, cognisance should be taken of the broader context of the proposed development, with particular reference to the infilling / waste facility activities being conducted from the adjoining lands to the immediate east / northeast as permitted under PA Ref. No. 16/177. In this respect, it is of note that despite the

grant of permission for PA Ref. No. 16/177 authorising the importation of approximately 80,000-100,000 tonnes of material to that site over a period of 8-10 No. years (with the duration of the permission having been subsequently extended until 21st March, 2027), there was no requirement to lodge any security as regards future road repairs. By way of comparison, the subject development, which involves the importation of up to 24,582 No. tonnes of material over a two-year period (with an additional six months expected for final site restoration once the infilling works have been completed), is of a considerably smaller scale and duration with fewer overall traffic (HGV) movements. In this context, it is questionable whether a development bond / security is warranted for the subject proposal. Indeed, it is of further relevance to note that Condition No. 3(g) of PA Ref. No. 16/177 requires '*Any consequential damage to the public road . . . [to] be made good to the satisfaction of the Planning Authority*' which is directly comparable to the provisions of Condition No. 6(c) as imposed on the subject proposal (*N.B.* While I would concede that Condition No. 7(c) of PA Ref. No. 16/177 refers to a programme for the monitoring of the condition of the R401 Regional Road at the entrance to that development and also requires the developer to carry out works deemed necessary by the Planning Authority in relation to the repair and upkeep of the road at the entrance to the development, it should be emphasised that this condition is specific to that part of the roadway at the site entrance as opposed to the wider public road network).

- 8.6. By way of further comment, I would draw the Commission's attention to the fact that the subject proposal will be accessed through the adjacent waste / infilling facility retained by the applicant via the existing entrance arrangement serving that operation which could give rise to difficulties in discerning any damage to the public road network attributable to the subject works from that caused by the already permitted activities.
- 8.7. Therefore, in view of the foregoing, on balance, I am inclined to suggest that the development bond / security sought by Condition No. 11 as imposed by the Planning Authority has not been adequately justified and is unwarranted.

9.0 AA Screening

- 9.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act, 2000, as amended.
- 9.2. The proposed development site is located in a rural area characterised by a low-lying topography and dominated by a mix of agricultural land, forestry, cutover peatland, and renewable energy development. The closest European Site, part of the Natura 2000 network, is The Long Derries, Edenderry Special Area of Conservation (Site Code: 000925), approximately 4.5km east-northeast of the site. The River Barrow and River Nore Special Area of Conservation (Site Code: 002162) is located c. 15.5km south of the site, however, it is approximately 23km downstream of the project site in hydrological terms.
- 9.3. The proposed development comprises the importation of up to 24,582 No. tonnes of clean, uncontaminated soil and stone under permit and as a byproduct under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended, for the purposes of raising ground levels and the agricultural improvement of the land.
- 9.4. 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 nature and scale of the development.
 - The distance to the nearest European site (The Long Derries, Edenderry Special Area of Conservation) and the absence of any ecological, hydrological or other pathways.
 - The physical and hydrological separation distance from the River Barrow and River Nore Special Area of Conservation and absence of any hydrological or other ecological pathways of note to the European site; and
 - The contents of the appropriate assessment screening report and determination completed by Offaly County Council.

- 9.5. I conclude, 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.
- 9.6. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act, 2000, as amended, is not required.

10.0 Water Framework Directive

- 10.1. An assessment of the proposed development has been undertaken in accordance with Article 4 of the EU Water Framework Directive (2000/60/EC), as transposed by the European Communities (Water Policy) Regulations 2003, as amended, and with regard to the Water Action Plan, 2024.
- 10.2. The receiving water environment has been identified and assessed, see Appendix 2 attached. Having regard to the nature, scale, and location of the proposed development, and the mitigation measures incorporated into the design, proposed and conditioned, it is concluded that the proposed development will not:
- Result in deterioration of the ecological, chemical, or quantitative status of any relevant surface water or groundwater body;
 - Increase pollutant loading or alter the hydrological regime of any receiving watercourse;
 - Prevent or impede achievement of environmental objectives under the applicable River Basin Management Plan.
- 10.3. Any residual risks are capable of being addressed through the proposed mitigation measures, mitigation conditions, and the implementation of a Construction and Environmental Management Plan (CEMP).
- 10.4. The proposed development is considered to be in compliance with the requirements of Article 4 of the Water Framework Directive.

11.0 Recommendation

- 11.1. Having regard to the nature of the condition the subject of the appeal, the Commission is satisfied that the determination by the Commission of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs Offaly County Council under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended, to **REMOVE** condition number 11 and the reason therefor.

Reasons and Considerations

1. Having regard to the nature, scale and limited duration of the development proposed, along with its relationship with adjoining permitted development, it is considered that, when taken together with condition number 6 of the planning authority's decision, the attachment of condition number 11 is unjustified and unwarranted.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Robert Speer
Senior Planning Inspector

31st July, 2026

Appendix 1 - Form 1: EIA Pre-Screening

Case Reference	PL-501402-OY-26
Proposed Development Summary	Levelling of agricultural lands by the importation of clean, uncontaminated soil and stone materials under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended. An Article 6(3) of the Habitats Directive Screening for Appropriate Assessment Report has been prepared in respect of the proposed development
Development Address	Ballykilleen, Shean, Edenderry, Co. Offaly.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2. ☐ No. No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
☒ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	

☒ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
☐ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	Screening Determination required (Complete Form 3)
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Appendix 2: WFD IMPACT ASSESSMENT SCOPING TABLE

Step 1: Nature of the Project, the Site and Locality

An Bord Pleanála ref. no.	PL-501402-OY-26	Townland, address	Ballykilleen, Shean, Edenderry, Co. Offaly.
Description of project	The importation of up to 24,582 No. tonnes of clean, uncontaminated soil and stone as a byproduct under Article 27 of the European Communities (Waste Directive) Regulations, 2011, as amended, for the purposes of raising ground levels and the agricultural improvement of land. Access will be obtained through an adjacent waste facility / infilling activity via the existing entrance arrangement serving that operation. The proposal includes for the re-grading and levelling of the site and final site restoration which will involve topsoiling followed by tilling and seeding of the land with grass and / or crops similar to those planted on adjacent lands over a 6-month period. Ancillary site development works include the provision of a wheelwash; the piping / culverting of the drain to the east of the site in order facilitate access from the adjacent waste facility; the maintenance of a 6m setback from a watercourse along the northern site boundary; and landscaping.		
Brief site description, relevant to WFD Screening,	The proposed development site is located in the rural townland of Ballykilleen, Shean, Edenderry, Co. Offaly, approximately 4.3km to the south of the town of Edenderry and c. 900m to the north of the Edenderry Power Plant, in an area characterised by a low-lying topography and dominated by a mix of agricultural land, forestry, cutover peatland, and renewable energy development. It has a stated site area of 1.33 hectares, is irregularly shaped, and comprises a poorly drained agricultural field set as lower quality grassland. There are field drains along the western, southern and northern site perimeter while the Ballykilleen Stream flows southwards along the eastern site boundary towards its confluence with the Figile River c. 650m further downstream. The underlying soils are characterised by 'cutover peat' as is further evidenced by surrounding land uses. The site is classified as benefitting lands under the River Barrow Drainage District /		

	Offaly Drainage Board. The scale of the mapping included as part of Strategic Flood Risk Assessment appended to the Offaly County Development Plan does not allow for the precise identification of the application site, however, the flood maps available at www.floodinfo.ie indicate that the land in question is not at risk of fluvial flooding.
Proposed surface water details	Percolation to ground with some runoff to field drains / drainage ditches. Proposed measures include the provision of a wheelwash; the piping / culverting (900mm diameter) of the drain to the east of the site; and the maintenance of a 6m setback from a watercourse along the northern site boundary;
Proposed water supply source & available capacity	None required. Use of bottled water.
Proposed wastewater treatment system & available capacity, other issues	None required, although wastewater from the wheelwash will be removed by an appropriately permitted haulier and the basin emptied when the need arises.
Others?	Not applicable.

Step 2: Identification of relevant water bodies and Step 3: S-P-R connection

Identified water body	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g. at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface runoff, drainage,	Mitigation Measures proposed	Is mitigation sufficient? Will there be any

					groundwater) (Consider all phases)		residual impacts?
River Waterbody	FIGILE_030 IE_SE_14F010200	Moderate	At risk	Significant Issues: Sediment, Hydrological, Organic Significant Pressures: Peat	Yes – hydrological pathway via surface water runoff to adjacent watercourse and field drains.	Maintenance of a 6m setback from the watercourse along the northern site boundary. Culverting / piping of the drain to the eastern site boundary. Requirement to maintain a 6m buffer from all drains adjacent to the site (Condition No. 2 as imposed by the Planning Authority). No refuelling or storage of fuel or hydrocarbons on site.	Mitigation is sufficient. No residual impacts

						Spill kits to be available on site in the event of leakage from trucks or machinery Final site restoration to involve topsoiling followed by tilling and seeding with grass and / or crops similar to those planted on adjacent lands. Construction and Environmental Management Plan to be agreed (Condition No. 5 as imposed by the Planning Authority)	
Groundwater waterbody	Cushina IE_SE_G_048	Good	Not at risk	None identified	Percolation to ground.	Only clean, uncontaminated soil & stone to be accepted at the site.	Mitigation is sufficient. No residual impacts