

SECTION 131 FORM

Appeal NO: ABP 319281-24

Defer Re O/H

Having considered the contents of the submission dated/ received 21/05/2024

from Killineer and

District Residents Association

recommend that section 131 of the Planning and Development Act, 2000

be not be invoked at this stage for the following reason(s): no new material issues

E.O.: Pat

Date: 28/05/2024

For further consideration by SEO/SAO

Section 131 not to be invoked at this stage.

Section 131 to be invoked – allow 2/4 weeks for reply.

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____ Task No: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ABP 319584-24

M _____

Please treat correspondence received on 21/05/2024 as follows:

1. Update database with new agent for Applicant/Appellant _____	
2. Acknowledge with BP <u>23</u>	1. RETURN TO SENDER with BP _____
3. Keep copy of Board's Letter <input type="checkbox"/>	2. Keep Envelope: <input type="checkbox"/>
	3. Keep Copy of Board's letter <input type="checkbox"/>

Amendments/Comments <u>Killineer + Dist Residents Assoc. response to S.131</u>
<u>01/05/24: 21/05/24 ✓</u>

<p>4. Attach to file</p> <p>(a) R/S <input type="checkbox"/> (d) Screening <input type="checkbox"/></p> <p>(b) GIS Processing <input type="checkbox"/> (e) Inspectorate <input type="checkbox"/></p> <p>(c) Processing <input type="checkbox"/></p>	<p>RETURN TO EO <input type="checkbox"/></p>
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	Plans Date Stamped <input type="checkbox"/>
	Date Stamped Filled in <input type="checkbox"/>
EO: <u>Pat B</u>	AA: <u>Anthony McNally</u>
Date: <u>28/05/2024</u>	Date: <u>30/05/2024</u>

Patrick

Karereickey

From: Bord
Sent: Tuesday 21 May 2024 10:51
To: Appeals2
Subject: FW: Response to Section 131 Request - ABP-319281-24
Attachments: 240521 LT to ABP.pdf

From: Fred Logue <fred.logue@fplogue.com>
Sent: Tuesday, May 21, 2024 10:38 AM
To: Appeals2 <appeals@pleanala.ie>
Cc: Bord <bord@pleanala.ie>
Subject: Response to Section 131 Request - ABP-319281-24

Caution: This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Response to Section 131 Request - ABP-319281-24

A Chara

Please find attached a response to your Section 131 request dated 1 May 2024 filed on behalf of Killineer and District Residents Association

Please acknowledge receipt
Fred

Fred Logue | Partner
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Tel: +353 1 531 3510 | Direct: +353 1 531 3508 | Web: www.fplogue.com

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Our Reference: FPL/912/03081
Your Reference: ABP-319281-24

21 May 2024

By email

An Bord Pleanála
appeals@pleanala.ie

Our client: Killineer and District Residents Association

RE: Construction of approx. 5,719 sq. m. gross floor area (GFA) main building to house hot dip metal galvanising plant and all associated site works. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) were submitted with the application. The proposed development will require an Industrial Emissions (IE) Licence under the EPA Act 1003, as amended

Mell, Drogheda, Co Louth

A Cháirde

1. We refer to your letter dated 1 May 2024 enclosing a copy of the developer's observations on the third party appeals and inviting a response by 21 May 2024.
2. Our client's appeal is called "Appeal C" by the developer, however this response will comment on the developer's observations on all the appeals. The failure to comment on a specific observation does not necessarily mean that our client accepts or agrees with the developer in that regard.

Topic 1 - Zoning/Heavy Industry

3. It is quite surprising that the developer is equivocal about whether the proposed development is characterised as heavy industry. This concept is generally understood to include capital intensive manufacturing, manufacturing of heavy items, and industry that is liable to cause emissions. In planning terms the concept of heavy industry (now called "special industry" in the 2022 Development Plan Guidelines) is industry which may give rise to emissions and which may also give rise to conflicts with other land use zonings. Special industry zoning is to be contrasted with "Business Park/Industrial Estate", "Warehousing & Distribution", "High Technology/Manufacturing Campus Development" and "Commercial Office Employment" in these guidelines.
4. Similarly in the Planning and Development Regulations 2001, a "light industrial building" is one in which the activities could be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell etc.

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5. It is therefore clear that Ireland's proposed largest zinc galvanising plant which requires an EIAR and comes within the scope of the Industrial Emissions Directive is heavy industry.

Topic 2 - Prematurity/Drogheda Joint Urban Area Plan

6. As the appellant has correctly pointed out there is currently no local planning policy for Drogheda. Louth County Council and Meath County Council are in long term default of their obligation to prepare a Joint Urban Area Plan for the town as required by the EMRA RSES.
7. A preparatory consultation has recently taken place on this plan. One of the topics in the issues paper is Economy and Employment and this makes express reference to IDA lands in the town that are earmarked for employment. In the absence of local policies in the County Development Plan, the only other statutory plan were specific local policies for the location of Heavy Industry is the Drogheda Joint Urban Area Plan and this has yet to be adopted. The application is therefore premature.

Topic 3 - Project Splitting

8. The developer's observations on the project splitting grounds of appeal are simply wrong. The developer misunderstands the important conceptual difference between the project as defined in the EIA Directive and the proposed development for which development consent is sought. The limited scope of the EIAR in this application is the very essence of project splitting as set out in the O'Grianna case.
9. In this case the project necessarily includes both the IDA works and the Uisce Éireann works. Since these developments provide road access to the R132 and connection to the waste water network respectively. In the same way that a wind farm requires a grid connection, a steel galvanising plant requires road access and a waste water connection, therefore these are part of the project regardless of whether they form part of the application for development consent.
10. Development consent cannot be given for development which forms part of a project that requires EIA unless the EIA for the project has first been carried out.
11. The developer contradicts itself in paragraphs 3.26 and 3.27 when on the one hand it says that there is a degree of movement between the Grangegeeth site and the site of the proposed development but on the other hand none of the developer's activities at its existing facility comprise any part of the galvanising process. The interconnection between the two locations was specifically introduced to justify the selection of certain alternative locations. This inconsistency undermines the EIAR and makes it impossible for the competent authority to carry out an EIA.

Topic 4 - Masterplanning

12. No further comments

Topic 5 - Alternative Locations

13. The appellant stands over its grounds of appeal concerning alternatives, the developer has not engaged at all with its arguments on this point. The appellant reminds the Board that alternative locations is only one facet of the obligation to consider alternatives as part of the EIA procedure.

Topic 6 - Cumulative effects

14. The developer incorrectly asserts that permission 18822 has expired, it appears to have overlooked the effect of section 251 and 251A of the Planning and Development Act 2000. In fact it appears that works have already taken place on foot of this permission with landscaping and other site development works evident. There is also the possibility that the duration of the permission may be extended.

Topic 7 - Prematurity in respect of Infrastructure Delivery

15. Once again the developer contradicts itself. In this section it refers to the requisite infrastructure to serve the business park and therefore admits that there is a functional dependence giving rise to a project that is greater in scope than the proposed development.

Topic 8 - Transport and Access

16. It appears that there are issues with sight lines and that there is a requirement for works outside the blue line to maintain safe compliant sight lines. The condition suggested at paragraph 3.59 is *ultra vires* the Board since it is impermissible for it to impose a condition on a third party, whether a private or public entity, requiring the third party to carry out works. Equally no evidence has been shown that Louth County Council does in fact own the land where these works are to take place. The LDA land ownership map is not evidence of title and cannot be relied upon for that purpose.

Topic 9 Sustainable Transport

17. No further comment

Topic 10 - Water Environment

18. There remain serious issues with the developer's treatment of the water environment and the response from Envirollogic.
19. At the outset the appellant emphasises that emissions to water are one of the most significant likely impacts of the proposed development as evidenced by the monitoring data associated with the other licensed galvanising facilities in Ireland.
20. The Board is asked to ensure that it has access to expertise in this area whether in-house or through the engagement of an independent consultant to review the EIAR in relation to water.
21. The Applicant has failed to demonstrate a conceptual understanding of the geological and hydrogeological setting of the Site.
22. Two boreholes (BH05 and BH06) are situated within the site. The borehole logs show varying depths of GRAVEL and gravelly CLAY at shallow depths beneath the Site. Gravelly CLAY subsoil was identified at location BH06 at depths between 0.4 m and 4.3 m. No gravelly CLAY was identified at location BH05. Instead GRAVEL was identified from 0.3 m to 7 m below ground. The total thickness of the GRAVELS remains unknown. The GRAVELS overlay a bedrock classified as a poorly productive aquifer.
23. It is emphasised that many local residents including members of our client take supply directly from this aquifer.

24. While CLAY soil is typically considered a low permeability soil, potentially offering protection for underlying groundwater bodies, in this site's case, the CLAYEY soils will be removed during the proposed construction works, resulting in development to be constructed on natural gravels. The EIAR and subsequent submissions lodged by the developer refer to the poorly productive bedrock aquifer but fail to mention the gravel beneath the site. It's worth noting that the gravels and fractured bedrock aquifer are hydraulically connected, forming a pathway for contamination (in the event of an incident or leak), with the potential to impact receptors both downgradient and cross-gradient from the Site.
25. The hydraulic properties referred to in the EIAR are based solely on desktop studies and assumptions; site-specific information has not been utilised, for example there are a number of private wells in the area that could have provided valuable information.
26. The developer incorrectly states that the Rose Hall Reservoir has been decommissioned. This is not correct. While it is not currently in use, the appellant understands from discussions with the local authority and Uisce Éireann that this is an active reservoir. In addition, no consideration has been given to impacts on the gravel and bedrock aquifer under the site or the water filled quarries downgradient of the site, one of which is currently being considered as a designated area of special conservation¹.
27. The proposed finished floor level of the main building is 43 maOD whereas elevations in excess of 48 maOD are present on the site. Clearly excavation below 43 maOD will be required. The proposed cut will remove all of the thin layer CLAY identified in the boreholes meaning that the development will take place on and in permeable gravels which will increase the risk of an impact on underlying groundwater, nearby private wells and other hydrologically connected water bodies.
28. The developer refers to a "perched water table" even though the bore hole logs show water strikes at 3.5m and 4.3m in GRAVEL. This is implausible.
29. The developer misunderstands its obligation in relation to compliance with the Water Framework Directive.
30. In relation to the Water Framework Directive (WFD) a number of obligations arise on both the developer and the competent authority.
31. EU law requires the EIAR to contain the data that are necessary in order to assess the effects of a project on the status of the bodies of water concerned in the light of the criteria and requirements laid down in, inter alia, Article 4(1) of the Water Framework Directive (Case C-535/18 IL).
32. The documents in the file that are made available to the public must make it possible for that public to obtain an accurate impression of the impact that the project at issue will have on the status of the bodies of water concerned in order for it to be able to verify compliance with the obligations arising from, inter alia, Article 4 of the Water Framework Directive. In particular, the data provided must be such as to show whether, having regard to the criteria established by that directive, the project at issue is liable to result in a deterioration of a body of water.
33. An incomplete file or data that are scattered, incoherently, across a multitude of documents are not such as to make it possible for the public concerned to participate effectively in the decision-

¹ <https://www.independent.ie/regionals/louth/drogheda-news/pictures-show-potential-for-louth-towns-very-own-central-park/a2012775358.html>

making process and, therefore, do not satisfy the requirements stemming from Article 6 of the EIA Directive.

34. When considering applications for planning permission, the planning authority is involved in making operational the program of measures as envisaged by Article 4(1) of the WFD. This provision imposes two separate objectives. First, in accordance with Article 4(1)(a)(i) WFD, the Member States are to implement the necessary measures to prevent deterioration of the status of all bodies of surface water (obligation to prevent deterioration). Second, pursuant to Article 4(1)(a)(ii) and (iii), the Member States are to protect, enhance and restore all bodies of surface water with the aim of achieving good status by the end of 2015 at the latest (obligation to enhance).
35. The upshot of this is that the competent authority is required, unless a derogation is granted, to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive.
36. The concept of deterioration means that there is deterioration as soon as the status of at least one of the quality elements, within the meaning of Annex V to the WFD, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a 'deterioration of the status' of a body of surface water.
37. The EPA also records information on the risk of waterbody not meeting WFD objectives. These are classified as "not at risk", "at risk" and "review".
38. A waterbody is "at risk" when either it is currently not achieving the WFD environment objective of Good or High ecological status or that there is an upward trend in nutrients or ammonia and if this trend continues the waterbody status will decline by the end of the WFD cycle and will fail to meet its environmental objective.
39. A waterbody is "not at risk" when it is achieving its environmental objective of either High or Good Status and there is no evidence indicating that there is a trend towards status decline.
40. A waterbody can be considered as "Review" for three reasons :
 - a. The waterbody does not have status assigned to it yet, it is referred to as an unassigned waterbody, and therefore there is not enough evidence to determine if it is At Risk or Not At Risk.
 - b. The waterbody has shown some slight evidence or improvement, but more evidence is needed before it can be considered as Not At Risk.
 - c. Measures are planned or have already been implemented for the waterbody and no further measures should be applied until there is enough time to assess if these measures are working.
41. While the developer is required to provide sufficient information to the competent authority. The competent authority is nonetheless required to carry out an independent assessment of the project in light of the above and to provide a reasoned decision of sufficient detail such that a

member of the public and a court can be satisfied that the project will not entail a breach of Article 4 WFD.

42. With that in mind, the following is required having regard to the methodology set out in Part V of the European Communities Environmental Objectives (Surface Waters) Regulations 2009 (the **Surface Water Regulations**).
43. First the competent authority must identify the relevant measures in the programme of measures applicable to a potentially affected waterbody and whether the achievement of the project at issue is compatible with those measures.
44. Second the competent authority must identify the quality element values for the biological and physico-chemical status and determine the current quality ratios as well as whether they satisfy the criteria in Schedule 5 and the values relative to those criteria.
45. Third, the competent authority must analyse and determine what pollutants may be emitted into the waterbody and must calculate the effect of that pollution on the quality elements.
46. Fourth the competent authority must also consider hydromorphological characteristics and the relevant quality elements such as the hydrological regime, river continuity, and morphological conditions.
47. If mitigation measures are specified, it is for the developer in the first instance to provide sufficient details of the characteristics of the mitigation measures and technical details about the range over which they are effective and objective information about their effectiveness. The standard required is one of scientific certainty. It cannot be assumed that mitigation measures will be 100% effective. Any mitigation measures which are qualified with phrases such as "as far as possible", "where practicable", "minimize" etc are not scientifically certain since they leave an unspecified discretion to the developer as to the extent of their deployment.
48. It is only if the competent authority is satisfied as a matter of scientific certainty with Article 4 compliance will it have jurisdiction to grant permission. Otherwise, it is required as a matter of EU law to refuse permission.
49. Furthermore if the competent authority decides to grant permission for a project that involves discharges to a waterbody that is liable to cause water pollution, Regulation 7 of the Surface Water Regulations requires it to lay down emission limits in the planning permission that satisfy the requirements set out in that regulation.
50. The developer has not provided any data to enable a lawful assessment of compliance with the WFD. While the EIAR may formally conclude that the proposed development is WFD compliant, this is not based on identified data and is presented as an unsupported conclusion without a scientific basis.
51. In any event the conclusion of the EIAR is more or less irrelevant since it is for the Board to carry out its own independent assessment and reach its own conclusion, which it is unable to do on the basis of the information currently on the file.

Topic 11 – Noise

52. No further comment

Topic 12 – Air Quality

53. No further comment

Topic 13 - Landscape

54. The EIAR expressly relies on the Louth Landscape Character Assessment which was prepared before the adoption of the ELC and GLVIA 3d edition. Therefore the EIAR chapter has been prepared without an appropriate baseline. As set out in the EIAR and GLVIA 3rd edition, the baseline is the foundation on which the assessment is built. If the baseline is inappropriate then the assessment cannot be carried out.

55. This issue is also perpetuated in that the EIAR itself doesn't actually correctly identify the fundamental concept of landscape as a resource under the ELC as explained in the GLVIA 3rd edition.

Topic 14 - Carbon

56. No further comment

Topic 15 – Cultural Heritage

57. No further comment

Topic 16 – Other matters

58. The HSA submissions is valid and speaks for itself, neither the developer nor the Board is entitled to dismiss this submission simply because they disagree with it, given that the HSA is the competent authority for SEVESO matters.

Conclusion

59. The developer has not adequately addressed the grounds of appeal. The appeal should be allowed and permission refused.

Yours faithfully



FP LOGUE LLP