

Laura Grady Lawlor

From: LAPS
Sent: Tuesday 15 October 2024 17:12
To: Appeals2
Subject: FW: Substitute Consent Application ABP-319970-24
Attachments: ABP-319970-24.pdf

From: Housing Manager DAU <Manager.DAU@npws.gov.ie>
Sent: Tuesday, October 15, 2024 3:50 PM
To: LAPS <laps@pleanala.ie>
Subject: Substitute Consent Application ABP-319970-24

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Dear Sir/Madam,

Please find attached heritage-related observations/recommendations for the above mentioned Substitute Consent Application.

Regards,

Brian Bone
Executive Officer

An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta
Department of Housing, Local Government and Heritage

Aonad na nIarratas ar Fhorbairt
Development Applications Unit

Oifigí an Rialtais, Bóthar an Bhaile Nua, Loch Garman, Contae Loch Garman, Y35 AP90
Government Offices, Newtown Road, Wexford, Co Wexford, Y35 AP90



Your Ref: ABP-319970-24

(Please quote in all related correspondence)

15 October 2024

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Via email to: laps@pleanala.ie

Re: Notification under the Planning and Development Act, 2000, as amended.

**Proposed Development: Substitute Consent under 177E for agricultural development
at Forest Lower, Mountmellick, Co Laois**

A chara,

I refer to correspondence received in connection with the above. Outlined below are heritage-related observations/recommendations co-ordinated by the Development Applications Unit under the stated headings.

Nature Conservation

A remedial Natura Impact Statement (rNIS), dated 30 April 2024, has been prepared by Kingfisher Environmental Consultants. The Department considers that the rNIS does not adequately assess the potential for the development to adversely affect the conservation objectives of the River Barrow and River Nore Special Area of Conservation (SAC) (Site Code: 002162), due to increased land spreading of slurry arising from the development.

The applicant's land holding, on which slurry is to be spread, bounds the River Barrow, part of the above SAC, for over 2 kilometres. Article 6(3) of the Habitats Directive (92/43/EEC) requires that the entire project is subject to assessment and the Department considers that the land spreading of slurry arising due the development is an intrinsic part of the project. The Department notes that the Sample Case Study 3 in the OPR Guidance on Appropriate Assessment Screening¹ outlines a similar case to this and advises that 'land spreading of

¹ OPR (2021) Practice Note PN01 Appropriate Assessment Screening for Development Management



nutrient rich effluent would occur at certain times of the year and impacts may be significant due to the proximity and pathway to the SAC and the sensitivity of the QI to changes in water quality'.

The River Barrow and River Nore SAC is designated for a number water dependant species and habitats, which are known or presumed to occur within the zone of influence of the development and have specific water quality requirements which are outlined in their respective Site Specific Conservation Objectives:

- **Atlantic Salmon** (Conservation status = Unfavourable Inadequate)
- **White-clawed crayfish** (Conservation status = Bad²)
- **River Lamprey** (Conservation status = Unknown)
- **Brook Lamprey** (Conservation status = Favourable)
- **Water courses of plain to montane levels with the *Ranunculus fluitantis* and *Callitriche-Batrachion* vegetation** (Conservation Status = Unfavourable Inadequate)

The Conservation objective for Atlantic Salmon is to restore the favourable conservation condition of Salmon in the River Barrow and River Nore SAC, which is defined, *inter alia*, by the target for at least an EPA Q value of Q4 at all sites sampled by the EPA. The Department notes that the most recent water quality monitoring within the Barrow_040 waterbody downstream of the development (2023) is moderate (3-4) (Barranagh's Bridge), while the latest upstream river Q value score is good (4) (Twomile Bridge) (2023). Land spreading of slurry will occur close to the Barrow_040 river waterbody, which as outlined above, lies adjacent to the landholding for approximately 2 kilometres. This waterbody is described as at risk of not meeting its Water Framework Directive (2000/60/EC) obligations due to the presence of nutrients from agriculture.³

As outlined in the Agricultural Report produced by Dempsey Agri and dated 20 May 2023, 5,327.4m³ of slurry is produced on the farm from 211 cattle (18-24 months), 314 cattle (6-12 months) and 700 dairy cows. The rNIS states that 'Slurry spreading is closed for the period of 1 October to 12 January in order to protect surface waters. The applicant will adhere to

² NPWS (2019). The Status of EU Protected Habitats and Species in Ireland. Volume 3: Species Assessments. Unpublished NPWS report. Edited by: Deirdre Lynn and Fionnuala O'Neill

³ EPA (2024) Cycle 3 HA 14 Barrow Catchment Report, May 2024



Statutory Instrument S.I. No. 113 of 2022 [European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022] and Statutory Instrument S.I. No. 393 of 2022 [European Union (Good Agricultural Practice for Protected of Waters) (Amendment) Regulations 2022].'

It is not clear that the general nationwide provisions of the above regulations or the Farm Full – Fertiliser Plan are sufficient to ensure that the development will not adversely affect the integrity of the River Barrow and River Nore SAC, in particular relating to water quality and the target to achieve at least Q4 for Atlantic Salmon and secure the lasting preservation of this species within the site. Appropriate assessment must be sufficiently detailed and reasoned to demonstrate the absence of adverse effects, in light of the best scientific knowledge in the field (C-127/02 paragraph 61). Further information is required in relation to this matter, which may require input from a suitably qualified hydrologist.

In Combination Effects

The rNIS states 'There has not been nor will there be any cumulative impact upon any Natura 2000 sites in combination with other plans or projects.' The potential for in-combination effects with the existing land spreading of slurry within the project's zone of influence, has not been assessed. The Habitats Directive does not circumscribe the scope of either 'plan' or a 'project' by reference to particular categories of either. Instead, the key limiting factor is whether or not they are likely to have a significant effect on a site. The term 'project' should be given a broad interpretation to include both construction works and other interventions in the natural environment. It should also be noted that plans/projects extend beyond those covered by the Planning and Development Act 2000. Further information is required in relation to in combination effects of existing land spreading of slurry within the project's zone of influence.

You are requested to send any further communications to this Department's Development Applications Unit (DAU) at: manager.dau@npws.gov.ie

Is mise, le meas,

Brian Bone
Development Applications Unit
Administration

