

objection No. 1.

Grainne Oglesby

Subject: FW: Successful Objection Payment for Licence Number P0975-01. (Reference Number: P0975-01-160710030500) - Payment submitted on 10/07/2016 15:07

From: Licensing Staff

Sent: 10 July 2016 15:10

To: sweetmanplanning@gmail.com

Cc: Licensing Staff

Subject: Successful Objection Payment for Licence Number P0975-01. (Reference Number: P0975-01-160710030500) - Payment submitted on 10/07/2016 15:07

Thank you for your online Third Party Objection for licence number P0975-01. Your objection has been received by the Environmental Protection Agency and will be acknowledged once the Objection has been validated.

A fee of €126 will be debited from your credit card once the objection has been confirmed.

Your reference number is P0975-01-160710030500. Please retain this for future reference.

Regards,

Environmental Protection Agency

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Grainne Oglesby

Subject: FW: New Third Party objection entered for Reg no: P0975-01. (Reference Number: P0975-01-160710030500)
Attachments: Objection to.pdf
Importance: High

From: Peter Sweetman [mailto:sweetmanplanning@gmail.com]

Sent: 10 July 2016 15:09

To: Licensing Staff

Subject: New Third Party objection entered for Reg no: P0975-01. (Reference Number: P0975-01-160710030500)

Importance: High

Objection submitted on: 10/07/2016 15:05

Title: Mr

First Name: Peter

SurName: Sweetman

Organisation Name: Peter Sweetman

Address Line 1: Rossport South

Address Line 2:

Address Line 3:

County: Mayo

Post Code: 0000

Email: sweetmanplanning@gmail.com

Objector Type: Third Party

Oral Hearing: No

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PETER SWEETMAN & ASSOCIATES
ROSSPORT SOUTH
BALLINA
COUNTY MAYO

sweetmanplanning@gmail.com

Environmental Protection Agency
Johnstown Castle
Wexford

Environmental
Protection Agency

10 JUL 2016

2016-07-09

Objection to

P0975-01	Clondrisse Farm Limited	Pig	Joristown Upper, County Westmeath.	Killucan,
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Dear Sir/Madam

We wish to object in principle to the Proposed Determination of the above application.

The inspector states;

Westmeath County Council required an EIS in support of the planning application ref 11/2091. The applicant has submitted in support of this licence application, the EIS which had been prepared in support of planning permission ref: 11/2091. Having reviewed the planner's reports for previous planning permissions, it is considered that the EIS submitted with the licence application adequately identifies, describes and assesses the direct and indirect effects of the entire activity.

It is our submission that no Environmental Impact Assessment was carried out by the Planning Authority.

The inspector states;

Having specific regard to EIA, this report is intended to identify, describe and assess for the Agency the direct and indirect effects of the activity on the environment, as respects the matters that come within the functions of the Agency, including any interaction between those effects and the related development forming part of the wider project, and to propose conclusions to the Agency in relation to such effects.

It is our submission that the inspector refused to assess the direct and indirect effects as he clearly states the spreading of slurry is outside his remit.

The inspector states;

The EIS submitted, the licence application, the submissions and observations received from third parties, the assessments carried out by the planning authority, consultations with the planning authority, the relevant planning decisions and any additional information submitted by the applicant have been examined and assessed and are considered below for that purpose.

It is our submission that he could not have examined an Environmental Impact Assessment carried out by the Planning Authority as none existed.

The inspector states;

I have considered and examined the documents furnished by Westmeath County Council in relation to the impacts assessed by them, in particular the planners report and the decision dated 19th June 2012 (11/2091).

It is our submission that there is no planners report dated 19th June 2012 on planning file 11/2091. Westmeath County Council stated the following in their submission "File Ref 11/2091 Permission granted on 23/7/2012 - See attached planning extract. (E.I.S.)."

This is an Environmental Impact Statement not an Environmental Impact Assessment.

1). Mr. Peter Sweetman submission

The inspector commented on our submission as follows;

The CJEU Judgement in Case C50/09 relates to the manner in which the EIA Directive is transposed into Ireland's legislation.

The judgement of the CJEU in case C 50/09 states;

1. Declares that:

- by failing to transpose Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003;**
- by failing to ensure that, where Irish planning authorities and the Environmental Protection Agency both have decision-**

making powers concerning a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of Directive 85/337, as amended by Directive 2003/35;

The judgement related to the manner by which the EPA and the Planning Authority carried out an Environmental Impact Assessment.

The inspector states;

Having reviewed the documentation relating to the application and EIS, I consider that the Agency is fulfilling its statutory role in relation to EIA.

The CJEU state in Case C 50/09;

- (1) Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia, of their nature, size or location are made subject to an assessment with regard to their effects. These projects are defined in Article 4.**

Westmeath County Council is quoted by the inspector as stating;

"For the past 3 years the residents have been complaining to the Environment Section here in Westmeath County Council regarding the foul odour coming from the piggery. Our staff have visited the pig farm (during office hours) and indeed Mr. Murphy has invited some of the residents from the area to inspect the pig farm when there hasn't been any smell. The residents are complaining that the fans go on early in the morning and in the evening, when the smell is chronic all through this area".

As the case law states the assessment must be carried out before consent is given, and in this case the development commenced more than 3 years before the 12th August 2015, The EPA has condoned a development or which no Environmental Impact Assessment was carried out.

The inspector states;

The Department of Arts, Heritage and the Gaeltacht are of the view that this development:

- has a potential to damage a significant population and habitat of otter, lamprey and salmonids which are listed under Annex II of the EU Habitats Directive.-(Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora).*

- has a potential to damage a significant area of the habitat of kingfisher which is listed under Annex I of the EU Birds Directive (Council Directive 79/409/EEC).

This potential impact would be caused by the

- Deterioration of the water quality resulting from pollution/eutrophication caused by the land spreading of pig manure within the catchment area of the aforementioned site.

The inspector's response states;

The management and control of organic fertiliser is addressed in section 6.7 below. The applicant has demonstrated that there is sufficient land capacity to use as fertiliser the organic fertiliser generated by the activity, based upon previous years records of movement off site. It should be noted, where organic fertiliser is used on land as fertiliser it is controlled by S.I. 31 of 2014 and the competent authorities are the Department of Agriculture, Food and the Marine and Local Authorities. The RD requires that organic fertiliser is managed on site in accordance with the requirements set out in S.I. 31 of 2014 and the Conditions of the RD. The RD cannot impose controls on the activities of the farmers receiving the organic fertiliser. The use of organic fertiliser as fertiliser in accordance with the Nitrates Regulations will not cause environmental pollution and will not have a significant effect on any European sites.

This response shows that the inspector has a total misunderstanding of the requirements of the Habitats Directive.

Compliance with the Directive requires a two tier approach 1 Screening for Appropriate Assessment under Article 5.2 and 2 the Appropriate Assessment under 6.3.

Screening for Appropriate Assessment is set out by Finlay Geoghegan J. in Kelly -v- An Bord Pleanála 2013/802 JR as follows;

26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.

48. The requirement that the effect in question be 'significant' exists in order to lay down a de minimis threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having any effect whatsoever on the site were to be caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill.

49. The threshold at the first stage of Article 6(3) is thus a very low one. It operates merely as a trigger, in order to determine whether an appropriate assessment must be undertaken on the implications of the plan or project for the conservation objectives of the site [...]"

The Advocate General states each of those versions suggests that the test is set at a lower level and that the question is simply whether the plan or project concerned is capable of having an effect. It is in that sense that the English 'likely to' should be understood.

Appropriate Assessment of this development.

The EPA carried out a AA Screening Determination dated 17/11/2015 it found;

*That the activity is not directly connected with or necessary to the management of those sites as European Sites and that it cannot be excluded, on the basis of objective scientific information following screening under this Regulation, that the activity, individually or in combination with other plans or projects, will have a significant effect on a European site and accordingly determined that an Appropriate Assessment of the activity is required, and for this reason determined to require the applicant to **submit a Natura Impact Statement**,*

The applicant submitted a SCREENING REPORT ON APPROPRIATE ASSESSMENT dated 04/02/2016 which concluded;

Having regard to the quality of the structures designed and in place for the carrying on of the existing and proposed pig rearing activity, together with the Good Farm Practice management intended and required to be implemented and adhered to in the installation, This Screening for Appropriate Assessment concludes that adverse effect of the pig rearing activity concerned on any of the SACs or on the SPA is not likely to happen and can be ruled out. On that basis it is considered that Appropriate Assessment should not be required.

This report does not even comply with the judgement of Finlay Geoghegan J. as a screening report.

As the EPA found that a NIS was required the Appropriate Assessment process is invalid.

The inspector found the following under 12.1 Birds Directive [2009/147/EC] & Habitats Directive [92/43/EEC]

The applicant provided an NIS that had been prepared in support of the planning application ref. no. 11/2091.

We are unable to find a NIS on planning file 11/2091

This actually has no relevance as the EPA found that a NIS was to be submitted and one was not.

The inspector states;

I have completed an Appropriate Assessment and determined, based on best scientific knowledge in the field and in accordance with the European Communities (Birds and Natural Habitats) Regulations 2011 as amended, pursuant to Article 6(3) of the Habitats Directive, that the activity, individually or in combination with other plans or projects, will not adversely affect the integrity of any European Sites, in particular River Boyne and River Blackwater SAC (Site Code 002299), Mount Hevey Bog SAC (Site Code 002342), Scragh Bog SAC (Site Code 000692) and Lough Owel SAC (Site Code 000688) having regard to their conservation objectives and will not affect the preservation of these sites at favourable conservation status if carried out in accordance with this recommended determination and the conditions attached hereto for the following reasons:

As the inspector does not have the necessary knowledge of all the effects of this development, for example the proximity of the spreadlands to the River Boyne and River Blackwater SAC (Site Code 002299),

The test for assessment under Article 6.3 is as described by the CJEU in Case C 258/11 at 40;

Authorisation for a plan or project, as referred to in Article 6(3) of the Habitats Directive, may therefore be given only on condition that the competent authorities – once all aspects of the plan or project have been identified which can, by themselves or in combination with other plans or projects, affect the conservation objectives of the site concerned, and in the light of the best scientific knowledge in the field – are certain that the plan or project will not have lasting adverse effects on the integrity of that site. That is so where no reasonable scientific doubt remains as to the absence of such effects (see, to this effect, Case C-404/09

Commission v Spain, paragraph 99, and Solvay and Others, paragraph 67).

We repeat the requirement is "once all aspects of the plan or project have been identified which can..."

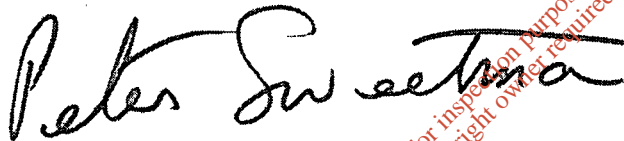
All aspects must include the spreading of slurry in the catchment of a SAC,

The report states at 14. Cross Office Liaison

Extensive communication has taken place between the Environmental Licensing Programme (ELP) and the Office of Environmental Enforcement (OEE) in relation to licensing of the intensive agricultural sector.

This communication has failed to mention the unauthorised use of this development for 4 years. It has failed also to assess the compliance with the conditions of the planning permission.

Yours faithfully



Peter Sweetman
And on behalf of
Monica Muller

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