

Sub. No.



An Taisce
The National Trust for Ireland

20161025-EPA-EP

Environmental Protection Agency
Johnstown Castle Estate
County Wexford
Ireland

Sent by email to:
info@epa.ie

25.10.16

Ref: W0294-01

Dear Sir/Madam,

Thank you for your letter in relation to W0294-01.

An Taisce have been made aware by Wicklow County Council of the above proposal and made a submission to An Bord Pleanala on the 11th November 2016. It is noted that the subject proposal would involve the clearance of vegetation (80%) from the existing site, the placement of 200,000 tonnes of dredge, importation of topsoil to facilitate planting and the development of walking tracks and nature trails.

1.0 Badgers

The EIS accompanying this application acknowledges the presence of a clan of badgers – 1 no. main sett and 5 no. sub setts. Badgers and their setts are protected under the Wildlife Act 1976 and the Wildlife (Amendment) Act 2000. It is an offence to intentionally kill or injure a protected species or to willfully interfere with or destroy the breeding site or resting place of a protected species. While it has been noted in the EIS that a badger derogation licence has been obtained, An Taisce wish strongly object destruction of five setts (a main sett, an annex sett, a subsidiary sett and three outlier setts) and the possible inference with other setts due to construction proximity.

The NRA Guidelines state that 'badger surveys are significantly constrained by vegetational cover and season, and are best conducted from **November to April**. All areas have to be systematically searched for setts and both sides of hedgerows and boundaries checked. Badger territorial activity is high from mid **January to March** and surveys at this time are **most efficient** of badger paths, latrines and feeding signs' (NRA – Guidelines for the treatment of badgers prior to the construction of national road schemes) [An Taisce emphasis added]. An Taisce note that the survey conducted for the purpose of the proposal was conducted initially during Septemeber and further studies between the 9th and the 13th of November 2015. The time of year that the survey was carried out may not be an accurate representation of badger activity on the subject site.

According to Roper (1994) the following stages in the breeding cycle may occur during the specified months: **Birth** Jan-Mar; **First emergence** Mar- July; **Weaning** Apr-July. This means that destroying setts between Jan-July may result in the deaths of young badgers which are not independent and are more likely to retreat to setts when disturbed. No active sett should be interfered with or disturbed during breeding season as any sett category may

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Directors: J Leahy, M Mehigan, D Murphy, B Rickwood (UK), C Stanley Smith (UK), A Uí Bhroin, P Kearney, J Sweeney

contain cubs (NRA Guidelines).

Badgers are territorial animals, they are not capable of simply moving into another territory. Given the number of setts being impacted, there is a significant chance that this will cause the collapse of the resident badger population.

2.0 Terrestrial Animals

It is noted that other terrestrial animals 'likely to occur on site' include: Hedgehog, Irish Stoat, Pine Marten and Pygmy Shrew. It is also noted that Red fox and European Rabbit dropping were found on site during site inspection. It is stated in the EIS that 'short-term impact to fauna will arise during the vegetation clearance and infilling works' but 'given the duration of the impacts and habitats present in the wider environment, affected mammals will be able to move **to other locations until the disturbance has cleared**'.

The Pine Marten is one of Ireland's rarest mammals. The likely occurrence of Pine Marten should be examined further. Any tree removal on the site would have a significant impact on this species, which is protected under the Wildlife (Amendment) Act and Annex V of the Habitats Directive and Appendix III of the Bern Convention.

3.0 Bats

The subject application acknowledges the presence of numerous bat species on site. Bat species recorded include Common Pipistrelle (*Pipistrellus pipistrellus*), Soprano Pipistrelle (*Pipistrellus pygmaeus*), Leisler's (*Nyctalus leisler*), Natterer's (*Myotis nattereri*) and Daubenton's (*Myotis daubentonii*). Bats are listed under Annex I of the Habitats Directive and are protected under the Wildlife Act (Amendment) 2000. The EIS accompanying this application stated that the site indicated that bats do forage within the site but are roosting elsewhere. An Taisce submit that the removal of vegetation (80%) on the site would destroy this foraging habitat.

4.0 Water Quality

It is also noted that there are 'two ephemeral stream within the site that join immediately to the south of the site and drain into the Kilcoole Stream'. It is stated in the EIS that 'the two streams within the site do not offer suitable habitat for Otter'. However, as previously stated, these streams drain south into the Kilcoole Stream. There is a historic record of Otter utilizing this stream approximately 1.75km west of the site. Otter spraints were recorded on the 07.05.1980 at a bridge crossing now part of the N11 (0270090) as part of the Otter survey of Ireland 1982 (Chapman and Chapman, 1982). There are also several more recent records at Webb's field, the breeches and the surrounding wetlands south of the Kilcoole railway station. The EIS further states that while otters would not be present within the site, otters are 'likely' to be utilizing Kilcoole Stream particularly the section downstream of Kilcoole Village'.

Otters are protected under The Irish Red Data Book 'Near Threatened'; Habitats Directive Annex II and IV; and Wildlife (Amendment) Act 2000.

In respect of species listed on Annex IV of the Habitats Directive (which as Stated above include Otters), it is prohibited without a licence to: deliberately capture or kill and specimen of these species, deliberately disturb these species, particularly during the period of breeding, rearing, hibernation or migration; or damage or destroy a breeding site or resting place of these animals.

Water quality is an important consideration in the protection of Otter species. It is stated that ‘..when water quality and terrestrial habitat needs are met, this species is capable of strong and sustained population expansion’ (NPWS - Lutra lutra (1355) Conservation Status Assessment Report)2. Potential water quality impacts need to be adequately assessed and mitigated against including release of silt laden run off, hydrocarbons stored onsite and waste occurrence during the construction phase. Additionally, there is a need to demonstrate presence or lack of otter holts on site.

Without appropriate mitigation the subject proposal could damage water quality status (and subsequently otter habitat) and would be contrary to the Water Framework Directive. With regards to the WFD, An Taisce note Judgment in case C-461/31 by the Court of Justice of the European Union in which it is stated that “..Member States are required – unless a derogation provided for by the directive is granted – to refuse authorization for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardizes 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”.

The subject proposal has the potential to create habitat fragmentation, disturbance and run off impacts within the area. Due regard and consideration needs to be given to the ecological value of the site and potential downstream impacts of the proposal.

Yours faithfully,

Ian Lumley,

Built Environment Office
An Taisce – The National Trust for Ireland

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Dorota Richards

Subject: FW: Submission - W0294-01
Attachments: 20161025-EPA-EP.pdf

From: Doireann NiCheallaigh [redacted]
Sent: 25 October 2016 17:47
To: Wexford Receptionist
Subject: Submission - W0294-01

Dear Sir/Madam,

Please find attached comments from An Taisce in relation to W0294-01,

Yours faithfully,

Doireann Ni Cheallaigh

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