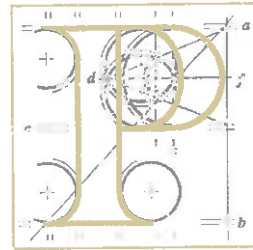


Our Ref: 09.JA0041
P.A.Reg.Ref:

Your Ref: P1063-01



An
Bord
Pleanála

Gráinne Oglesby
Environmental Protection Agency
Johnstown Castle Estate
Co. Wexford

Date: 14 MAY 2018

Re:
Kerdiffstown Landfill Remediation Project at
Kerdiffstown, Co. Kildare

Dear Madam,

An order has been made by An Bord Pleanála determining the above-mentioned case. A copy of the order is enclosed.

In accordance with section 146(3) of the Planning and Development Act, 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the decision on its website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.


The attachment contains information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

If you have any queries in relation to the matter please contact the undersigned officer of the Board.

Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

For inspection purposes only
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PP 
Muiriosa Cassells
Executive Officer
Direct Line: 01-8737130

JA18.LTS



Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act, 2000, as amended

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

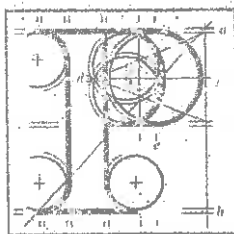
The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, **www.citizensinformation.ie**.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

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An
Bord
Pleanála

Board Order
09.JA0041

Planning and Development Acts, 2000 to 2017

Planning Authority: Kildare County Council

Application by Kildare County Council for approval under section 175 of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including an environmental impact assessment report lodged with An Bord Pleanála on the 30th day of August, 2017.

Proposed Development: Kerdiffstown Landfill Remediation Project consisting of the following:

- (a) Phased remediation works proposed to take approximately five to seven years with approximately four years of intensive construction works to remediate the site. The remediation phase will include:
- Construction of a new site access
 - Realignment of the L2005 Kerdiffstown Road to facilitate continued safe usage during the remediation phase (and aftercare phase). Improvement works to include provision of a new footpath and cycleway adjacent to the realigned road extents
 - Demolition and removal of on-site structures
 - Installation of new foul and leachate pipeline connections to Johnstown Pumping Station

- Provision of improved leachate management system to remove and transfer leachate to a wastewater treatment plant via the public sewer network
- Construction of a new landfill infrastructure compound to contain landfill management plant and equipment in a single, secure location, as well as a site office and storage area for the management and maintenance requirements of the site
- Re-profiling the site to address current over-steep slopes to permit installation of an engineered capping and/or soil cover system, to allow for surface water drainage and provide mitigation of long-term settlement of the waste mass
- Provision of engineered capping of predominant areas of waste to prevent infiltration of rainwater, reducing leachate production, and to enable management of landfill gas and odour
- Provision of soil cover systems to provide suitable growing media for the landscaping of the site, providing stability to slopes and an opportunity for further enhancement in end-use proposals
- Installation of new or supplementary gas wells and gas venting measures
- Installation of a new landfill gas flare stack and back-up flare within the landfill infrastructure compound
- Provision of surface water management infrastructure to manage run-off post-capping completion, to control discharges from the site

(b) Provision of a public amenity park and multi-use sports facility end use comprising:

- Vehicular and pedestrian/cycle main entrance and access roads within the park
- North-west pedestrian entrance with security gate
- Public walkways and informal tracks within the site
- Main car park for approximately 100 spaces with opportunity for additional mobility impaired and coach/mini-bus parking
- Overspill car park for approximately 100 spaces with close access to informal footpaths/cycle paths

- Changing rooms (four number) and public toilet facilities
- Store room for materials required in use of sports pitches
- Playground area adjacent to the main changing room building
- Bicycle parking provision
- Three synthetic (or similar approved surface) pitches (two sized 90 metres by 145 metres suitable for multiple codes including GAA, rugby and soccer, which can be sub-divided, each lit by six number 18-metre high hinged masts; the third pitch offering flexibility as a training pitch or as three number five-a-side pitches, lit by six number 8-metre high hinged masts)
- Ball-retention fencing (12 metres high by 30 metres wide) at Kerdiffstown Road end of each pitch
- Implementation of surface water management measures and landscaping works
- All ancillary site works

All at Kerdiffstown Landfill, Kerdiffstown, County Kildare.

Decision

Approve the above proposed development based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to the following:

- (a) the relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU,
- (b) section 175 of the Planning and Development Act 2000, as amended,
- (c) the fact that the proposed development requires an Industrial Activities Emission Licence from the Environmental Protection Agency, which will regulate activities on the site, and that environmental emissions will be controlled by way of conditions attached to such a licence,
- (d) the policies and objectives set out in the Kildare County Development Plan 2017-2023 including Policy WM16 which states that 'the Council will work in conjunction with government departments and Agencies and all other relevant stakeholders to remediate the Kerdiffstown Landfill in a socially, economically and environmentally sustainable manner that will both manage and reduce environmental risk and accommodate an appropriate end-use that is compatible with the established character of the area',
- (e) the current un-remediated nature of the site, the limited environmental control measures implemented on site and the resulting risk of future environmental pollution,
- (f) the beneficial environmental impacts of the proposed development in terms of protecting ground and surface water quality in the vicinity of the site,
- (g) the beneficial impacts of the proposed development on human health and population in terms of new recreational and leisure amenity,
- (h) the documentation and submissions of the local authority including the submitted Environmental Impact Assessment Report (EIAR) and associated documentation submitted with the application and the range of mitigation and monitoring measures proposed,

- (i) the submissions and observations received by the Board in relation to the proposed development,
- (j) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European Sites, and
- (k) the report and recommendation of the Inspector.

Appropriate Assessment Screening:

The Board considered the Screening Report for Appropriate Assessment and all other relevant submissions and carried out an appropriate assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites. The Board noted that the proposed development is not directly connected with or necessary for the management of a European Site and considered the nature, scale and location of the proposed development, as well as the report of the Inspector. In completing the appropriate assessment screening, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other plans or projects in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the sites' conservation objectives and that a Stage 2 appropriate assessment is not, therefore, required.

Environmental Impact Assessment:

The Board completed an environmental impact assessment of the proposed development taking account of:

- (a) the nature, scale, location and extent of the proposed development on a site that is subject to significant risk of environmental pollution,
- (b) the Environmental Impact Assessment Report (EIAR) and associated documentation submitted in support of the planning application,

- (c) the submissions received from the local authority, prescribed bodies and observers, and
- (d) the Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the environmental impact assessment report and associated documentation submitted by the applicant and submissions made in the course of the planning application.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- Air pollution and noise during the construction/remediation phase which would be avoided by the indicated operation of the existing landfill gas flare and by the implementation of measures within a Construction and Environment Management Plan (CEMP) to include specific provisions relating to the control of dust, odours, noise and landfill gas management measures.
- The risk of pollution of ground and surface waters during the construction/remediation phase which would be mitigated by the implementation of measures within a Construction and Environment Management Plan (CEMP) to include specific provisions relating to groundwater, surface water, and erosion, as well as mitigation for the management of leachate.
- Biodiversity impacts, including on badgers and bats, which would be mitigated by the implementation of a Site Biodiversity Management Plan under the CEMP and specific mitigation to protect badgers and bats during the construction/remediation phase.
- The proposed development gives rise to an increase in vehicle movements and resulting traffic which would be mitigated by the new layout of the L2005,

including new site access, the preparation of a Construction Traffic Management Plan, a mobility management plan and pre and post-construction road condition surveys.

- The risk of impact on a recorded monument would be mitigated by a programme of pre-construction archaeological testing followed by archaeological resolution if required.

The Board also considered that environmental benefits would arise from the proposed development, particularly during the aftercare phase when the site would be in operation as a public amenity, with improved controls on surface water, groundwater and air quality.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, as set out in Chapter 19 of the EIAR which provides a Schedule of Environmental Commitments, and subject to compliance with the conditions set out below, the effects of the proposed development on the environment, by itself and in combination with other plans and projects in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Proper Planning and Sustainable Development:

It is considered that subject to compliance with the conditions set out below:

- (a) The proposed development would address the current environmental risks posed by the site and would have likely beneficial environmental impacts in terms of ensuring future ground and surface water quality and air quality in the vicinity of the site.
- (b) The proposed development would result in an end use in the form of the public park and active leisure facilities that would be of overall benefit to the Johnstown, Naas and wider Kildare areas.
- (c) The proposed development would not result in any unacceptable adverse impacts in terms of biodiversity, land, soil, water, air, climate, material assets,

cultural heritage, landscape, population, and human health, during either the construction activities on site or the aftercare phase.

The Board concluded that the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars, including the Environmental Impact Assessment Report (EIAR), and other associated documentation, lodged with An Bord Pleanála on the 30th day of August 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be prepared by the local authority, these details shall be placed on file prior to commencement of development and retained as part of the public record.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. The mitigation and monitoring measures outlined in the plans and particulars relating to the proposed development, including those set out in Tables 19.1-19.13 of Chapter 19 of Volume 2 of the Environmental Impact Assessment Report submitted with this application, shall be implemented in full except as may otherwise be required in any Industrial Emissions Activity Licence (IEAL) issued by the Environmental Protection Agency in respect of the proposed development or as may be required in order to comply with the following conditions. Prior to commencement of development, details of a time schedule for implementation of the mitigation measures and associated monitoring shall be prepared by the local authority and placed on file and retained as part of the public record.



Reason: In the interest of clarity and to mitigate the environmental effects of the proposed development.

3. Prior to commencement of development, the local authority, or any agent acting on its behalf, shall prepare a Construction and Environmental Management Plan (CEMP) generally in accordance with the commitments set out in the EIAR and as detailed in Table 19.1 of Chapter 19 of same. The CEMP shall include specific proposals as to how the CEMP will be measured and monitored for effectiveness, and it shall be on file prior to the commencement of development and retained as part of the public record.

Reason: In the interest of protecting the environment, the protection of European Sites and in the interest of public health.

4. Site development and building works shall only be carried out between the hours of 0700 to 1900, Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received by the contractor from the local authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

5. The operational hours of the floodlighting to the sports pitches shall not extend beyond 2200 hours with automatic cut-off of floodlighting at that time.

Reason: To protect the residential amenity of properties in the vicinity.

6. A suitably qualified ecologist shall be retained by the local authority to oversee the construction of the proposed development and implementation of mitigation measures relating to ecology as set out in Table 19.7 of the EIAR, including the proposed Site Biodiversity Management Plan. Upon completion of works, an ecological report of the site works shall be prepared by the appointed ecologist and submitted to the local authority to be kept on file as part of the record.

Reason: In the interest of nature conservation and the protection of terrestrial and aquatic biodiversity.



**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 11th day of May 2018