

# NEW APPEAL FORM

245044

Section 26 Appeal

Section 37 Appeal

Lodged: 22/6/15 Dev. Type: 01 No:           
 Case Type: 03 Class: 10 12  
 EO: BT Category:           
 Development: Demolish 10 pig houses, constructs 2 pig houses, extensions to 2 existing structures to form pig house no 3 Driveway structures on site of existing pig farming enterprise  
Andon, Bracknagh, Co. Offaly  
 PA Code: 19 Reg.Ref: 15/2 Applic. Type: 03 Applic. Lodged: 2/1/15  
 PA Dec: 05 PA Dec Date: 26/5/15 OH Request Date:           
 Issue Code: E06 Priority No: 3 NIS: Y/N EIS: Y/M Size:           
 Correct Fee: Y/N Fee Type: 5 (m) to (x) Name/Address Appellant: ☒ 3rd Party Ack: ☒

Appellant: Michael Hoey  
 Address/Agent: 152 Conn Nu Portlengton  
Co. Laois  
 Applicant: Rosdore Farms  
 Address/Agent: c/o CHW Environmental Planners Ltd -  
The Mews, 23 Farnham Street, Carran.

M         

PA notified by phone

Yes ☒

No ☐

EO: B Tiana

Date: 24/6/15

PA Contact: Olivia

Appeal on Surfboard: ☒

EO: B Tiana

Date: 24/6/15

Comments: EPA

1. Acknowledge with: BP01

Merge:

(1) psplit ☐

(2) msplit ☐

(3) revplan ☐

(4) omitdoc ☐

(5) info ☐

(6) xmas ☐

2. Issue appeal to:

(a)

PA: BP07

(b)

Applicant: BP25

3. Return appeal

with:         

4. Return to prepare

exp.ltr:         

Appeal Number on Surfboard: ☐

AA: L. O'Connell

Date: 24/6/15

Updated Aug. 2013

**AN BORD PLEANÁLA**  
 Received: 22/6/15  
 Fee: €220 C.G.  
 Receipt No: B128837

Secretary  
 An Bórd Pleanála  
 64 Marlborough  
 Dublin 1

**AN BORD PLEANÁLA**  
 TIME 16:40 BY Hand  
 22 JUN 2015  
 LTR-DATED 22/6 FROM RK  
 PL \_\_\_\_\_

152 Crann Nua  
 Portarlinton  
 Co. Laois

22/06/2015

Re Observation /Appeal of Offaly County Council's decision to grant permission and not development consent for planning reference 15/2.

Dear sir /madam and to whom it concerns.

The competent authority are ignoring the issues of Assessment and Appropriate assessment.

Would the Board adjudicate on whether the competent authority complied with Annex 11.A Information refferd to in Article 4.4 of the EIA directive ( Information to be provided by the developer etc, which was appended to my Objection.

#### ***Legal status***

Your obligation to establish the legal status of the underlying development is further clarified by Justice Hedigan in his judgement in Harrington v An Bord Pleanála [2010] IEHC 428 at 7.6 to 7.7 stated; "...It is clear from the cases of Westwood Club Ltd v. An Bord Pleanála [2010] IEHC 16 and Quinlan v. An Bord Pleanála [2009] IEHC 228, that the Board was obliged to take into account the legal status of the underlying development. To do otherwise would be to view the proposal out of context. ...

7.7 It seems clear that An Bord Pleanála can and indeed should take into account all relevant factors known to exist within the context of the application made, including the planning history of the site."

Therefore you are now obliged to consider and establish the legal status of this development which has been carried out without an EIA or an Appropriate assessment for the original development and in doing so ensure compliance with case C-427/07 Commission V Ireland (retention permission is not applicable to EIA)

In reaching your decision you are obliged to consider Article 6 of the Habitats directive and establish how this development is connected to and whether or not this development is for the benefit of the SAC. The term development also includes the spread grounds and the individual farm nutrient plans and their exact location have to be included.

The IPCC license Inspectors report states that slurry is spread from this unit within the catchment of the River Barrow. It is planned to produce 11310m3 of slurry annually. **No assessment has been made of the impact of this land spreading,** particularly on the River Barrow and River Nore SAC Site Code 002162..

## The Site Synopsis for 002162

Is out dated and is not reliable because of your failure to ever carry out an assessment and or appropriate assessment for any and all of the projects within the catchments of the Barrow and Boyne. The site synopsis does include the fact that;

‘The spreading of slurry and fertiliser poses a threat to the water quality of the salmonid river and to the populations of Habitats Directive Annex II animal species within the site

Therefore the Assessment and Appropriate assessment yet to be carried out should take into account the Waste Assimilative Capacity of all of the main channel of the River Barrow and the Boyne.

The Assessment should include the cumulative impacts of all abstractions and discharges from and to the River Barrow as far as the first Weir on the river Barrow which controls the water from the upper reaches at Athy.

Particular account of the new Sewage discharge pipe from the Kildare town Sewage works which is situated approximately 4 KMs above the abstraction point for a water supply for drinking water purposed by Kildare County Council for which no assessment or Appropriate assessment was carried out by the competent authorities the practice of which have been approved by you the appeals board.

In addition, because of condition no 3 and the reason for Condition No 2 of the parent decision for the Edenderry Power Station 98/437 and PL 19.107858 an assessment of the impact of the development and the circumstances now prevailing is now required to be carried out. It is my contention that assessment of the impact of the loss of water from the upper reaches of the Barrow catchment (above the weir at Athy) combined with the discharges from industrial farming and local authority discharge from their treatment works has been put on hold until the 31<sup>st</sup> December 2015.

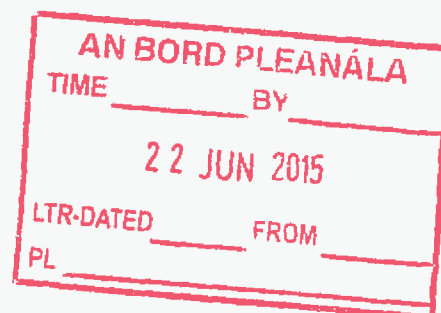
As stated over the years since the finding of the CJEU in case C-392/96 Commission v Ireland the splitting of the assessment process makes it impossible to consider the interaction of the various elements or establish the cumulative effects of the impact of the development with other developments which is required under condition no 2 of 98/437 and 19.107858 which is governed by the derogation granted by the European Commission.

**Take note that;** You are in full knowledge of the existence of the Agreement since the 3rd of March 2014 by Notice of Motion in case 21 of 2014 J.R. Hoey v An Bórd Pleanála (Refer to your solicitor Brendan Slattery of Arthur Cox who is now a partner in Barry Doyle and Co. for An Bórd Pleanála about this matter)

Therefore if I do not receive confirmation in writing within 7days by email to [Hoeyndry@gmail.com](mailto:Hoeyndry@gmail.com) and or text to 0874190911 that you are refusing to consider this application in isolation as has been the practice confirmed by you by letter dated the 15<sup>th</sup> of April 2003 (attached) referred to as Exhibit 3B in current proceeding 245/2015 J.R. Hoey v An Bórd Pleanála I will have to bring this matter to the courts attention on the 28<sup>th</sup> of July next.

Yours Sincerely

*Michael Hoey*  
Michael Hoey



## THE HIGH COURT

## ELA Review

**BETWEEN:**

## Michael Hoey

**Applicant**

-and-

## AN BORD PLEANÁLA,

## Respondents

Exhibit Reference "MH 3B"

Referred to in the

**Affidavit of Michael Hoss sworn**

12th of May 2015

Michael Holy

*[Handwritten signature]*

- Senior Partner  
 - Partner  
 - Solicitor  
 - Port of Call  
 - Call to

AN BORD PLEANÁLA  
TIME \_\_\_\_\_ BY \_\_\_\_\_  
22 JUN 2015  
LTR-DATED \_\_\_\_\_ FROM \_\_\_\_\_  
PL \_\_\_\_\_

Michael Hoey  
Spencer Bridge  
Rathangan  
Co. Kildare

15<sup>th</sup> April, 2003

**Re: Kildare Water Strategy – Barrow Abstraction proposal and  
associated environmental impact statement**

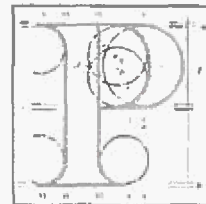
Dear Mr. Hoey,

I refer to your letter of 3<sup>rd</sup> April, 2003 in relation to the above-mentioned matter and also to our conversation in the Board's offices relating to the issues raised in your letter.

To reiterate, the approval applications currently before the Board for the Portlaoise Water Supply Improvement Scheme (case ref:11.EC2011) and Groundwater Abstraction from North Kildare Aquifer at Roberstown, Co. Kildare (case ref:09.EC2012) were lodged with the Board as separate applications by Kildare County Council and are being dealt with as separate applications by the Board. Submissions or observations in relation to these proposals must be made individually for each separate proposal. Please note that the Board will not be dealing with these proposals and the current Barrow Abstraction proposal cumulatively. This is not how we process such applications.

With regard to the incorrect address on the public notice by Kildare County Council for the River Barrow Water Abstraction proposal, please note that the incorrect address did not prejudice any persons wishing to make a submission as the Board have directed An Post to redirect all post from our old address at Lower Abbey Street to 64 Marlborough Street, Dublin 1. In addition, I attach a fax which I forwarded to you following your query on the correct address for submissions on the River Barrow Abstraction proposal.

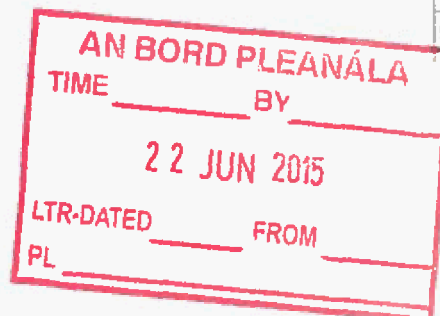
An Bord Pleanála



64 Strand Meabhán,  
Baile Átha Cliath 1

Tel: (01) 872 8100  
Toll-free: 1890 274 175  
Fax: (01) 872 2684  
Web: <http://www.pleanala.ie>  
Email: [board@pleanala.ie](mailto:board@pleanala.ie)

64 Marlborough Street,  
Dublin 1





Our Ref: 09.EL2015  
Your Ref: BA 2 03 2

By way of clarification, you were denied access to the following files on 3<sup>rd</sup> April, 2003 for the following reason:

11.EC2011	Portlaoise Water Supply Improvement Scheme
09.EC2012	Groundwater abstraction from North Kildare Aquifer Robertstown, Co. Kildare
09.ED2019	Wellfield development, Rathangan
09.ED2020	Wellfield development, Johnstown Bridge
09.ED2021	Wellfield development, Hybla, Monasterevin
09.ED2023	Kildare Water Strategy and Mitigation Measures for Kildare Bypass

Public access to all of these files was denied as they are current files out with the Board's inspectors for report.

The Board's files are open for public inspection three days after the Board's decision.

Trusting this clarifies matters for you, if you have any queries in relation to the above, please contact the undersigned officer of the Board.

Yours sincerely

  
Ellen Morrin  
Senior Executive Officer

Direct Line 01-8737260

Encl.

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AN BORD PLEANÁLA	
TIME _____	BY _____
22 JUN 2015	
LTR-DATED _____	FROM _____
PL _____	

An Bord Pleanála



64 Srid Maudbhrick,  
Baile Átha Cliath 1

Tel: 011 898 8100  
Fax: 011 890 275 175  
Fax: 011 872 2654  
Web: <http://www.pleanala.ie>  
email: [board@pleanala.ie](mailto:board@pleanala.ie)

61 Marlborough Street,  
Dublin 1



OFFALY COUNTY COUNCIL  
ARAS AN CHONTAE  
CHARLEVILLE ROAD  
TULLAMORE  
CO OFFALY  
PHONE 05793 46800  
05/05/2015 11:19:23

Receipt No. : MTBKDESK/0/110795

MICHAEL HOEY  
152 CRANN NUA  
PORTARLINGTON  
CO LAOIS

REF : 15/02

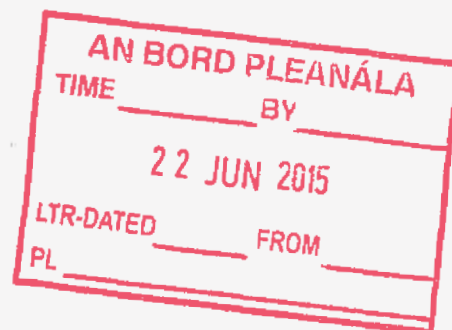
SUBMISSIONS/OBSERVATIONS FEES 20  
GOODS 20.00  
VAT Exempt/Non-vatable  
15/02

Total : 20.00 EUR

Tendered :  
CASH 20.00

Change : 0.00

Issued By : Arlene OConnor  
From : MOTOR TAX BACK OFFICE CASH DE  
Vat reg No.0401100N



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ACKNOWLEDGEMENT of RECEIPT of SUBMISSION or OBSERVATION on a  
PLANNING APPLICATION

**THIS IS AN IMPORTANT DOCUMENT!**

KEEP THIS DOCUMENT SAFELY. YOU WILL BE REQUIRED TO PRODUCE THIS ACKNOWLEDGEMENT TO AN BORD PLEANÁLA IF YOU WISH TO APPEAL THE DECISION OF THE PLANNING AUTHORITY. IT IS THE ONLY FORM OF EVIDENCE WHICH WILL BE ACCEPTED BY AN BORD PLEANÁLA THAT A SUBMISSION OR OBSERVATION HAS BEEN MADE TO THE PLANNING AUTHORITY ON THE PLANNING APPLICATION

**OFFALY COUNTY COUNCIL**

MR MICHAEL HOEY  
152 CRANN NUA  
PORTARLINGTON  
CO. LAOIS.

06/05/2015

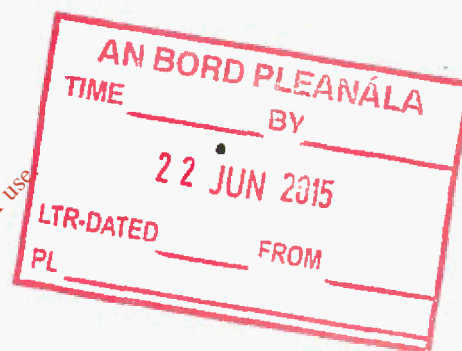
Planning Reference No. PL2/ 15/2

Re: (A) DEMOLITION OF 10 NO. EXISTING PIG HOUSES, AND, (B) CONSTRUCTION OF 2 NO. PIG HOUSES, AND, EXTENSIONS TO 2 NO. EXISTING STRUCTURES TO FORM PIG HOUSE NO. 3, TOGETHER WITH ALL ANCILLARY STRUCTURES (TO INCLUDE MEAL STORAGE BINS, STORAGE TANKS, STORMWATER ATTENUATION TANK) AND ALL ASSOCIATED SITE WORKS ON THE SITE OF AN EXISTING PIG FARMING ENTERPRISE. THIS APPLICATION RELATES TO A DEVELOPMENT, WHICH IS FOR THE PURPOSES OF AN ACTIVITY REQUIRING AN INTEGRATED POLLUTION PREVENTION AND CONTROL (I.P.P.C.) LICENCE UNDER PART IV OF THE ENVIRONMENTAL PROTECTION AGENCY (LICENSING) REGULATIONS 1994 TO 2013. AN ENVIRONMENTAL IMPACT STATEMENT (E.I.S.) HAS BEEN SUBMITTED WITH THIS PLANNING APPLICATION at ARDRA BRACKNAGH.

A submission/observation in writing has been received from MR MICHAEL HOEY, 152 CRANN NUA, PORTARLINGTON, CO. LAOIS. on 05/05/2015 in relation to the above planning application.

The appropriate fee of €20 has been paid.

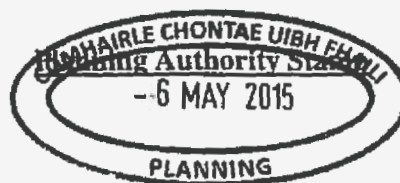
Telephone (057) 9357414





The submission/observation is in accordance with the appropriate provisions of the Planning and Development Regulations, 2001 - 2013 and will be taken into account by the planning authority in its determination of the planning application.

  
Administrative Officer



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AN BORD PLEANÁLA	
TIME _____	BY _____
22 JUN 2015	
LTR-DATED _____	FROM _____
PL _____	

152 Crann Nua  
Portarlinton  
Co. Laois

Planning Section  
Offaly County Council

Planning Reference 15/2

**Proposed Development**

(A) DEMOLITION OF 10 NO. EXISTING PIG HOUSES, AND, (B) CONSTRUCTION OF 2 NO. PIG HOUSES, AND, EXTENSIONS TO 2 NO. EXISTING STRUCTURES TO FORM PIG HOUSE NO. 3, TOGETHER WITH ALL ANCILLARY STRUCTURES (TO INCLUDE MEAL STORAGE BINS, STORAGE TANKS, STORMWATER ATTENUATION TANK) AND ALL ASSOCIATED SITE WORKS ON THE SITE OF AN EXISTING PIG FARMING ENTERPRISE. THIS APPLICATION RELATES TO A DEVELOPMENT, WHICH IS FOR THE PURPOSES OF AN ACTIVITY REQUIRING AN INTEGRATED POLLUTION PREVENTION AND CONTROL (I.P.P.C.) LICENCE UNDER PART IV OF THE ENVIRONMENTAL PROTECTION AGENCY (LICENSING) REGULATIONS 1994 TO 2013. AN ENVIRONMENTAL IMPACT STATEMENT (E.I.S.) HAS BEEN SUBMITTED WITH THIS PLANNING APPLICATION

**Development Address:** ARDRA, BRACKNAGH, CO. OFFALY

Given that the original consents for this development does not include a derogation from having to apply the EIA and Habitats directive. Your continued decisions to grant permission without carrying out an environmental impact assessment and or an appropriate assessment for this and similar developments identifies a systemic failure to carry out an environmental impact assessment and an appropriate assessment for all developments you Offaly County Council , have adjudicated on for the last 27 years to date.

I am objecting to this application (at this stage) on the following grounds but not limited to.

**1. Breach of Article 5.1 of the EIA Directive**

The attached Assessment compliance Sheet for this application identifies the gaps in the mandatory information to be supplied by the developer (or the minimum amount of information to establish a valid application)

**2. Invalid application**

Article 2.1 of the EIA directive states;

'1.Member States shall adopt all measures necessary to ensure that, before development 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 a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.

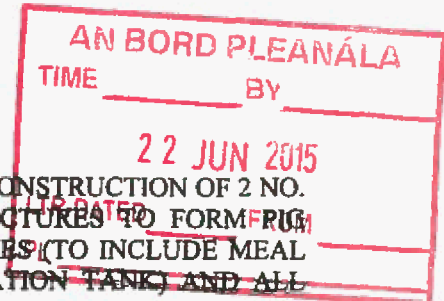
Section 171A (1) of the Planning and Development Act 2010 defines an environmental impact assessment, for the purposes of Part X, as:

An assessment which includes an examination, analysis and evaluation carried out by the planning authority

COMHAIRLE CHONTAE URBH FHAIL

05 MAY 2015

PLANNING



05 MAY 2015

PLANNING

Offaly County Council Planning Reference 15/2 - EIA Assessment sheet 1.  
As part of Michael Hoey's Objection which requires the Planning authority to verify whether each aspect is in compliance with the EIA directive.  
Directive 2014/52/EU amending directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

(1) The following Annex is inserted:

ANNEX II.A INFORMATION REFERRED TO IN ARTICLE 4(4) (INFORMATION TO BE PROVIDED BY THE DEVELOPER ON THE PROJECTS LISTED IN ANNEX II)

1. A description of the project,

Please state Yes or no to each aspect

Description 1.

A) DEMOLITION OF 10 NO. EXISTING PIG HOUSES, AND, (B) CONSTRUCTION OF 2 NO. PIG HOUSES, AND, EXTENSIONS TO 2 NO. EXISTING STRUCTURES TO FORM PIG HOUSE NO. 3, TOGETHER WITH ALL AUXILIARY STRUCTURES (TO INCLUDE MEAL STORAGE BINS, STORAGE TANKS, STORMWATER ATTENUATION TANK) AND ALL ASSOCIATED SITE WORKS ON THE SITE OF AN EXISTING PIG FARMING ENTERPRISE.

including in particular:

(a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;

Description 1(a).

(b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.

Description 1(b).

AN BORD PLEANALA	
TIME	BY
22 JUN 2015	
LTR-DATED	FROM
PL	