

file

S.37
File With

P. Davis

SECTION 131 FORM

Appeal No: PL 29 .245044

Defer Re O/H

To: SEO _____

Having considered the contents of the submission dated received 18/8/2015 from Michael Hoey I recommend that section 131 of the Planning and Development Act, 2000

be/not be invoked at this stage for the following reason(s): No new issues

EO: B. Tien

Date: 3/9/15

To EO: _____

Section 131 not to be invoked at this stage

Section 131 to be invoked - allow 2/4 weeks for reply

SEO: _____

Date: _____

SAO: _____

Date: _____

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M _____

Please prepare BP _____ Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/3/4 weeks BP _____

EO: _____

Date: _____

AA: _____

Date: _____

CORRESPONDENCE FORM

Appeal No: PL 19 . 245044

Mr. Kennedy

Please treat correspondence received on 18/8/2015 as follows:

<p>1. Update database with new agent for Applicant/Appellant _____</p> <p>2. Acknowledge with BP <u>23</u></p> <p>3. Keep copy of Board's Letter <input type="checkbox"/></p>	<p>1. RETURN TO SENDER with BP _____</p> <p>2. Keep Envelope: <input type="checkbox"/></p> <p>3. Keep Copy of Board's letter <input type="checkbox"/></p>
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Amendments/Comments	<u>Res. to Sec. 131 res. from Michael</u>
	<u>Use</u>

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<p>4. Attach to file</p> <p>(a) R/S <input type="checkbox"/> (d) Screening <input type="checkbox"/></p> <p>(b) Mapping <input type="checkbox"/> (e) Inspectorate <input type="checkbox"/></p> <p>(c) Processing <input type="checkbox"/></p>	<p>RETURN TO EO <input checked="" type="checkbox"/></p>
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	Plans Date Stamped <input type="checkbox"/>
	Date Stamped Filled in <input type="checkbox"/>
EO: <u>Fergal McIlmurray</u>	AA: <u>L. J. [Signature]</u>
Date: <u>21/8/2015</u>	Date: <u>24/08/15</u>

David Curran

From: Bord
Sent: 18 August 2015 16:10
To: procbordemail
Subject: FW: PL 19 245044
Attachments: OCC ref 15 2 & Bracknagh Pig Farm Submission ABP 19 245044-signed.pdf

From: Michael Hoey [<mailto:hoeyndry@gmail.com>]
Sent: 18 August 2015 16:03
To: Bord
Subject: PL 19 245044

Please find attached - Submission requested by Bord

Yours Sincerely

Michael Hoey

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152 Crann Nua
Portarlinton
Co. Laois

22/06/2015

Secretary
An Bórd Pleanála
64 Marlborough
Dublin 1

Re: Observation and Submission on the Appeal of Offaly County Council's decision to grant permission and not development consent for planning reference 15/2 (Appeals Board reference 19.245044)

Dear Sir /Madam

For the record I am a Navigation Authority for the purposes of the Water Supplies Act of 1942 and I am very concerned about the over abstraction from and the discharges to the catchment of the River Barrow coupled with the failure of the relevant Competent authorities to comply with their European Environmental obligations.

Any due diligence of the operation before the purchase should have identified the precarious operating conditions of the what has been made known to both the Competent authority and the Appeals board for 27years. The trouble is traced back to advice received from MR Conor Skehan who stated in relation to Screening ;

*'Screening is a crucial issue because of the divergences of views which can exist on the same topic. An authoritative statement on the need to avoid unnecessary EIA will be included together with advice on the existence of other forms of appropriate evaluation.'*¹

In opposition to the 30 years of corporate inertia ... I submit that there is no legal basis for asserting or maintaining that this development has development consent ;

1. DEVELOPMENT CONSENT .

Article 2(1) and (3) of Directive 85/337, as amended by Article 3(3) of Directive 2003/35, states:

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

¹ cc0001 strategy for assessing EIS for EPA.doc

nature, size or location are made subject to a requirement for **development consent** and an assessment with regard to their effects. These projects are defined in Article 4.

Assessment previously stated in my submissions this development was carried out without an Assessment and an Appropriate Assessment.

2. I submit that there is no legal basis for asserting or maintaining that this development has a valid **IPC licence**. In particular, it is alleged that licence no Po614-01 was issued on the 21st of November 2003. The legal status of the licence was clarified by the CJEU in case C-50/09 Commission v Ireland when it was argued by the Commission in that case that there was a 'gap' in the Irish legislation such that it was possible that an application for a waste licence could be granted by the EPA without an EIA having been carried out. At para 77 the court states; *'In those circumstances, while nothing precludes Ireland's choice to entrust the attainment of that directive's aims to two different authorities, namely planning authorities on the one hand and the Agency on the other, that is subject to those authorities' respective powers and the rules governing their implementation ensuring that an environmental impact assessment is carried out fully and in good time, that is to say before the giving of consent, within the meaning of that directive.'*

I submit that in practice the 'gap' has not been fulfilled in this case that includes the mandatory requirement for the aims and objectives of the EIA, Habitats the Strategic Environmental Assessment and Water Framework Directive directives to be achieved.

In practice as with this current application because there is no joined up thinking/ assessment the appeals board are in fact adjudicating on a development that has no valid licence and are poised to continue the cycle of ineptitude by granting permission (and not DEVELOPMENT CONSENT)

While Page 6 of the NIS is not quite clear is only partially correct when it states; *'consent can only be granted for a project if, as a result of the appropriate assessment either (a) it is concluded that the integrity of the Site will not be Adversely affected, or (b) where an adverse effect is anticipated, there is an absence of alternative solutions, and there exists imperative, overriding public interest for the project should go ahead.'*

The Assessment of Significance of Effects²

The NIS on page 38 states; *'Impacts from land-Spreading, Nitrogen deposition, pollution from storm water run-off and pollution during flood events.'* ... WILL BE INSIGNIFICANT IF / Because *'the distance, design and mitigation will ensure that no impacts arise'*. It is not clear what the distance refers to.

And

'If the mitigation measures outlined in Section 5 are attached to any grant of planning permission, then any direct, indirect or cumulative impacts upon these species will be negligible.'

² Page 38 of the NIS

Unfortunately in this case because of the *priority species* in the Barrow Nore SAC the Board are restricted to complying with article 6.4 of the Habitats Directive which states;.. *Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.*

In reaching the conclusion that there will be no adverse effects which has been clarified in CJEU 258/11 Sweetman at paragraph 40 which states; '*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).*'

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 and their impact assessed.

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. In addition, the cumulative impacts of the increase demand for water and the discharge from the increase of between 55 and 60 % of dairy farm output should also be assessed.

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.

If and when both responsible bodies carry out the mandatory Assessments ensure to consider the cumulative effects. 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 and any other abstractions and discharges from and within the catchment are considered.

It is my contention that as the appeals board you are restricted to adjudicating whether or not the competent authority complied with Annex 11.A - Information referred to in Article 4.4 of the EIA directive (Information to be provided by the developer etc, which was appended to my Objection. The Board is obliged to establish whether or not the required directives are being complied with and any impact, modification or alteration of the status of the SAC's is scientifically proven and is without any doubt to adversely impact of the SAC's and to nullify any failure to comply with the Directives and their objectives.

The EIS and the NIS make no reference to the STRATEGIC ENVIRONMENTAL ASSESSMENT which is alleged to have been carried out by the Department and please take note that this document has not been made available to me.

The cursory reference to an STRATEGIC ENVIRONMENTAL ASSESSMENT having been carried out for SI 31 of 2014 is unacceptable and inappropriate with regard to Article 3(2)(b) of the SEA Directive, because that provision requires an environmental assessment every time an assessment is required under Articles 6 or 7 of the Habitats Directive. Therefore it is imperative to ensure compliance with this Article which should take into consideration the objectives of the Habitats and Water Framework Directives and obligation to restore the certified draft of 1.5 metres for the Barrow Navigation while assessing the cumulative effects of all the abstractions from and discharges to the catchment of the Barrow Nore SAC along with all the quarrying and all the Peat removal from within the catchments of Both the Barrow and the Nore.

Flooding

Given that the levels for new structures proposed as part of the current application will be approximately 1.8m higher than existing floor levels confirms that the plant was built on a flood plain as confirmed by the earliest Ordnance survey confirms that the plant is actually causing or is likely to cause Environment Pollution.

Organic waste ?

While the claim that the waste is organic might appear to be trivial the appropriate certification will be required and vigorously pursued to attain and satisfy any form of consent. In addition the CJEU ruled in case C-133/12 Brady v EPA there is an obligation to ensure personal liability for compliance by those users with Union legislation concerning the control of waste and/or fertilisers, in order to ensure that the third parties' use of that pig slurry by land spreading will not give rise to a risk of significant environmental pollution?

In summary this application is in essence an application for the production of waste and without knowing the volumes, the type or the additives including antibiotics and other forms or volumes of chemicals contained therein or knowing where, when and how this waste is being spread this application cannot be considered further as a valid application.

Yours Sincerely

Michael Hoey
Michael Hoey