



### Submission

Submitter:	Michelle Kane
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### Application

Applicant:	GCHL LIMITED
Reg. No.:	W0298-01

See below for Submission details.

Attachments are displayed on the following page(s).

# **BALYNA ENVIRONMENTAL ACTION GROUP**

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19 July 2024

## **Re: Infringements of EIA Directive and Violation of CJEU Judgements**

The Balyna Environmental Action Group (BEAG) wishes to register this complaint against Kildare County Council (the Council) and the Environmental Protection Agency (the Agency). The complaint will demonstrate that the Council and the Agency clearly violate the legislation adopted by the EU institutions under Article 288 of the Treaty on the Functioning of the European Union (TFEU). These violations, as evidenced by the CJEU judgements in Cases C-50/09, C-215/06 and C-494/01, are of the utmost concern as they can cause pollution to our water supply.

### **1. GCHL Limited Unauthorised Developments at Ballinderry, Carbury, County Kildare:**

The complaint relates to a licence application (Ref Number W0298-01) submitted by GCHL Limited (the Company) to the Agency to dispose of waste at the Ballinderry site in Carbury County Kildare. This waste is to be disposed of on a site where several unauthorised developments are taking place, posing a serious environmental threat to the residents' wells, the only drinking water source in the Ballinderry area.

The Council's repeated failure to implement the High Court Order (No: 2015/383MCA) and the section 55 Notice (Ref: 47/2017) under the provisions of the Waste Management Act 1996 (as amended) is a source of great frustration and disappointment.

Paragraph 78 of the judgment C-50/09 states:

*“The Commission maintains that it has identified, in the Irish legislation, a gap arising from the combination of two factors. The first is the lack of any right on the part of the Agency, where it receives an application for a licence for a project as regards pollution aspects, to require an environmental impact assessment. The second is the possibility that the Agency might receive an application and decide on questions of pollution before an application is made to the planning authority, which alone can require the developer to make an environmental impact statement.”*

The Planning and Development (Amendment) Act 2010 (Act 2010) was enacted in July 2010 further to give effect to the CJEU judgements in Cases C-50/09 and C-215/06. The Act 2010 amended section 87(1C) of the EPA Act, which now provides that where an application for a licence is made to the Agency in respect of an activity that involves development or proposed development for which a grant of permission is required but the applicant does not comply with subsection 87 (1B) the Agency **shall refuse to consider the application** and shall inform the applicant accordingly.

The Agency has been processing the waste licence application for over five years. It has never screened to ensure compliance with section 87(1B) of the EPA Act 1992, as amended, and section 42(1B) of the Waste Management Act 1996.

This screening is required to implement the EIA Directive as amended by the Public Participation Directive following the CJEU judgment in Cases C-50/09 and C-215/06. The CJEU judgment in Case C-50/09 ruled that it was an infringement of Articles 2 to 4 of the EIA Directive, as amended by the Public Participation Directive 2003/35/EC, to process a waste licence application before a planning application being submitted to the relevant planning authority.

No environmental Impact Assessment (EIA) was carried out under Article 3 of the EIA Directive, and no Appropriate Assessment screening was carried out under Article 6(3) of the Habitats Directive 92/43/EEC for this project.

## **2. Roadstone Quarry at Ballinderry, Carbury, County Kildare:**

On 8 May 2024, the Council permitted Roadstone Ltd. Planning PL 23/613 to extend the life of the existing quarry development at Kilglass, Carbury, County Kildare. [Kildare County Council \(kildarecoco.ie\)](http://kildarecoco.ie). An Bord Pleanála granted the planning permissions in 2009 (Ref: PL09.118274), and the processing includes crushing, washing, and screening (Ref: PL.09.226718).

The Environmental Impact Statement Report for PL 23/613 was not carried out by the EIA Directive 2014/52/EU, which is a violation of CJEU judgment in Case C-50/09 and Article 291 (1) of the Treaty on the Functioning of the European Union, which states that *“Member States shall adopt all measures of national law necessary to implement legally binding Union acts*

No Environmental Impact Assessment (EIA) was carried out in accordance with Article 3 of the

EIA Directive, and no Appropriate Assessment screening was carried out by Article 6(3) of the Habitats Directive 92/43/EEC for PL09.118274 or PL.09.226718.

The planning application states, "*Part of the proposed restoration element of the development will require a waste licence from the Environmental Protection Agency.*" However, the Agency has not carried out a screening to ensure compliance with section 87(1B) of the EPA Act 1992, as amended and section 42(1B) of the Waste Management Act 1996, as amended.

### **3. Moyvalley Meats Ltd Unauthorised Developments**

Kildare County Council has allowed Moyvalley Meats Ltd to operate a slaughtering project for the past 28 years without carrying out an EIA or Appropriate Assessment screening. The relevant classes of developments requiring EIA are in Annex 1 and 2 of the EU EIA Directive. Moyvalley Meats Ltd slaughtering project is an Annex 2 project under the EIA Directive, paragraph 11 class 7 (Food Industry (f) Installations for the slaughter of animals.

It is also listed under Schedule 5 of the Planning and Development Regulations 2001 (as amended). Schedule 5 transposes Annex I and Annex II of the EU EIA Directive, as amended into Irish law as Parts 1 and 2 of the Schedule. Moyvalley Meats Ltd slaughtering is a project is listed under paragraph C, class 7 (Food Industry), defined as follows (f) Installations for the slaughter of animals, where the daily capacity would exceed 1,500 units and where units have the following equivalents: - 1 sheep = 1 unit 1 pig = 2 units 1 head of cattle = 5 units

Accordingly, in compliance with Chapter 2 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016, amended by the Planning and Development Act 2000, as amended, an EIA and Appropriate Assessment screenings must be carried out together under sections 176A to 176C into that Act. This Chapter provides for a determination, in advance of and separate to making a planning application, as to whether an EIA is required for a proposed development of a class specified in regulations made under section 176 of the 2000 Act. Article 2(1) of the EIA Directive requires that projects likely, by virtue inter alia, of their **nature, size or location**, to have significant effects on the environment are to be subject to an environmental impact assessment.

Para 19 of CJEU judgment in Cases C-392/96 states: -

*“The Commission alleges that Ireland has transposed Article 4(2) of the Directive incorrectly by setting absolute thresholds for the classes of projects covered by points 1(b) (use of uncultivated land or semi-natural areas for intensive agricultural purposes), 1(d) (initial afforestation/land reclamation) and 2(a) (extraction of peat) of Annex II to the Directive. The absolute nature of the thresholds means that it is not possible to ensure that every project likely to have significant effects on the environment is subject to an impact assessment, because the mere fact that a project does not reach the threshold is sufficient for it not to be subjected to an assessment, regardless of its other characteristics.*

*Under Article 4(2) of the Directive, however, an account must be taken of all the characteristics of a project, not the single factor of size or capacity. Furthermore, Article 2(1) refers also to a project's nature and location as criteria for assessing whether it is likely to have significant environmental effects. The Commission considers that this analysis is consistent with the*

*judgments of the Court in Case C-133/94 Commission v Belgium [1996] ECR I-2323 and in Case C-72/95. Kraaijeveld and Others v Gedeputeerde Staten van Zuid-Holland [1996] ECR I-5403.”*

In 2022, the Council accepted and processed a planning application PL22/245 by Moyvalley Meats for the retention of numerous unauthorised developments at Tanderagree, BroadfordCounty Kildare. [Kildare County Council \(kildarecoco.ie\)](http://kildarecoco.ie)

The Council's acceptance and processing of this permission for Retention violated the CJEU judgment in Case C-215/06. The Council should have informed Moyvalley Meats Ltd to apply to An Board Pleanála in accordance with the provisions of section 177E (1) of the Planning & Development Act 2010 for substitute consent under a notice given under section 177B or 261A or a decision to grant leave to apply for substitute consent under section 177D.

Articles 2 to 4 of the EIA Directive 2011/92/EU, as amended by Directive 2014/52/EU, apply to certain licensable activities that require both a land-use consent and a waste licence. Section 87(1C) of the EPA Act 1992 provides that where an application for a licence is made to the Agency in respect of an activity that involves the development or proposed development for which a grant of permission is required, but the applicant (Moyvalley Meats Ltd) did not comply with subsection (1B) the Agency **shall refuse to consider the application and shall inform the applicant accordingly.**

The Agency failed to carry out a screening to ensure compliance with section 87(1B) of the EPA Act 1992, as amended, and section 42(1B) of the Waste Management Act 1996, as amended. The Agency is presently carrying out unauthorised waste disposal activities on this site that involve directly discharging wastewater into the Glash River, which flows into the Boyne River.

This river system is designated as a Special Area of Conservation (SAC) under the Habitats Directive and a Special Protection Area (SPA) under the Birds Directive. The Glash River itself, is also protected under S.I. 293/1988 Salmonid Waters Regulations, 1988.

In other words, the Agency has carried out an unauthorised waste disposal development in violation of Chapter 2 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016, amended the Planning and Development Act 2000, as amended, by inserting new sections 176A to 176C into that Act.

The Chapter provides for a determination, in advance of and separate to making a planning application, as to whether an EIA is required for a proposed development of a class specified in regulations made under section 176 of the 2000 Act. Finally, the Irish authorities noted that it also provides for EIA screening and screening with respect to appropriate assessment to be carried out together.

#### **4. Keegan Quarries Unauthorised Developments**

In 2021, Keegan Quarries applied for the **Retention** PL 21/931 of a 2.25 ha development area consisting of 3 no. Settlement ponds, 3 no. Stockpiles and all ancillary site works for 3 years at Ballyonan, Broadford, Co. Kildare. The Planning Authority issued a notification on 5th April 2022 confirming that it was precluded from considering the application as it included the retention of development, which would have required (i) an EIA, (ii) a determination as to whether an EIA is required, or (iii) an AA.

Under section 261A (QRA 01-001) on 3 October 2012, Kildare County Council determined that the requirements concerning the registration under section 261 were not fulfilled and that development was carried out after 1 February 1990, which would have required a determination as to whether an EIA was required, but that such determination was not carried out or made. It was also identified that there would have been potential for significant impacts arising from the quarrying activities on the River Boyne and River Blackwater cSAC and SPA.

Kildare County Council refused permission for PL 94/474 because the submitted EIAR had not provided an assessment of the material to be imported. The Council was not satisfied that the proposals for water management would adequately protect water quality in the vicinity, thus preventing water pollution and preserving the public health of residents in the area of the subject site.

On 4 October 2023, An Bord Pleanála refused planning permission for the following reasons:

- 1) Having regard to the location of the proposed development and its proximity to residential dwellings, and to the lack of adequate baseline information in respect of sensitive receptors as presented in the application and appeal documentation, it is considered that the proposed development, notwithstanding the mitigation measures proposed in the Environmental Impact Assessment Report submitted at the application stage, would seriously injure the amenities of properties in the vicinity by reason of noise and general disturbance. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 2) The HGV turning movements which would arise on entering and exiting the proposed site access would result in a conflict with oncoming traffic travelling along local road L1011, and as such, the proposed development would endanger public safety by reason of a traffic hazard and obstruction of road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 3) On the basis of the information submitted with the planning application and appeal, the Board is not satisfied that the overall water management and drainage system, as proposed, is at a level of detail to draw satisfactory conclusions in relation to the proper and satisfactory management of surface water and groundwater.

- 4) The proposed development would, therefore, give rise to a potential source of water pollution, would be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

Despite this, on 11 June 2024, the Council granted Keegan Quarries Retention (Ref: 2489) for a steel container to be used as a temporary shelter, a drying room, and a personal storage room for the on-site staff. [Kildare County Council \(kildarecoco.ie\)](http://kildarecoco.ie) This is an ancillary of the development refused by An Bord Pleanála.

Kildare County Council has violated the Planning and Development (Amendment) Act 2010 (Act 2010) by granting Retention permission twice to Keegan Quarries. This Act contains multiple amendments to the 2000 Act to render our domestic legislation fully compliant with EU requirements. This violates the CJEU judgment in C-215/06 as the Act 2010 was part of the legislation transposed by the Oireachtas to give effect to the judgment C-215/06.

The Act 2010 created the “substitute consent” regime, provided for by including Part XA (s. 177) and section 261A in the 2000 Act. Section 177E of the 2000 Act makes provision for an application to An Bord Pleanála (the Board) for substitute consent. Under subs (2)(a), such is made “*pursuant to a notice given under section 177B or s. 261A, or a decision to grant leave to apply for a substitute consent under section 177D*”.

Section 177C (1) of the Act 2010 states that a person who has carried out a development referred to in subsection (2) or the owner or occupier of the land as appropriate, to whom no notice has been given under section 177B, may apply to the Board for leave to apply for substitute consent in respect of the development.

Keegan Quarries is presently disposing of waste within its unauthorised site at Ballyonan, Broadford, Co. Kildare. The Council has failed to seek remedies under 19 (1) of the TEU against Keegan Quarries for failing to comply with the legislation transposed into Irish law by the Oireachtas under section 3 of the European Communities Act 1972 to give effect to the CJEU judgements in Cases C-50/09, 215/06, and C-494/01.

### **5. Matthew Walsh Unauthorised Waste Disposal Facility**

In March 2023, Matthew Walsh applied to Kildare County Council to restore a disused Sand and Gravel Pit to agricultural use at Kilglass, Balrinnet, Carbury, Co. Kildare PL23/302. The proposed site covers approximately 6.4 hectares, and approximately 20,000 tonnes of waste will be disposed of annually. [Kildare County Council \(kildarecoco.ie\)](http://kildarecoco.ie)

This waste disposal project is related to PL 07/184, granted to Goode Concrete Ltd., under section 261 of the Planning and Development Act, 2000. The subject site's section 261 Registration Number is QRA-03-020 (QY/19). The development consists of continuing extraction from the existing quarry, with a total site area of 38.2 hectares. An EIS accompanied that planning application.

The planning application PL23/302 stated that the maximum annual tonnage to be accepted would be 20,000 tonnes, so an EIAR is not required. This is an infringement of Article 4(2) of the EIA Directive 2014/52/EU and a violation of the CJEU judgement in Cases C-392/96, which states that in accordance with Article 2(1), a project's nature, size, and location shall be assessed to establish its likely significant environmental effects.

In addition, no Environmental Impact Assessment (EIA) was carried out in accordance with Article 3 of the EIA Directive, and no Appropriate Assessment screening was carried out under Article 6(3) of the Habitats Directive 92/43/EEC for PL 07/184.

While the Council refused planning permission, it failed to implement the legislation adopted by the EU institutions under Article 288 of the Treaty on the Functioning of the European Union (TFEU) to give effect to the EIA Directive as amended by the Public Participation Directive following the CJEU judgements in Cases C-50/09, C-215/06, and C-494/01.

As a result of all the above breaches of EU Law, the concerned residents were deprived of their rights to effectively participate in the decision-making process under Articles 3(3) to (7) and Articles 4(2) to (4) of the Public Participation Directive 2003/35/EC, Articles 2(2) and 6 (4) of the codified EIA Directive 2011/92/EU as amended by Directive 2014/52/EU and Article 6 of the Aarhus Convention.

In conclusion, the violations of EU law are serious, and the Balyna Environmental Action Group requests the Commission to take decisive action against Ireland for breaches of democracy, human rights, and the rule of law.

Yours sincerely,

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