

Environmental Licensing Programme
Office of Environmental Sustainability
Environmental Protection Agency
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Wexford

10/11/2021

IW ref: LT0529

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Re: Youghal Waste Water Discharge Licence Application D0139-02

Dear Inspector,

In response to the Regulation 18(3)(b) request for information notice dated 30th September 2021, please see below for relevant information.

Clarify whether the Dunn's Park outfall infrastructure is or is not development, or is or is not exempted development, under the Planning and Development Act 2000. Clarify whether a grant of planning permission was/ is required for the Dunn's Park outfall infrastructure. Where the Dunn's Park outfall infrastructure is considered exempted development, provide confirmation by specific reference to the relevant legislation or by providing a declaration/ decision from the relevant planning authority/ An Bord Pleanála. You may wish to refer the matter to the planning authority/ An Bord Pleanála for a declaration/ decision under Section 5 of the 2000 Act.

The Dunn's Park outfall infrastructure was constructed during the 1970's by, to the best of Irish Water's knowledge, Youghal Urban District Council. It was constructed at a time when planning permission was not required for local authority development, by virtue of the Local Government (Planning and Development) Act 1963 (the 1963 Act).] at a time when planning permission was not required for local authority development, by virtue of the Local Government (Planning and Development) Act 1963 (the 1963 Act).

Section 4 of the 1963 Act (which was subsequently amended and then repealed) originally stated:

"4.—(1) The following shall be exempted developments for the purposes of this Act:
(b) development by the council of a county in the county health district;
(c) development by the corporation of a county or other borough in such borough;
(d) development by the council of an urban district in such district; [...]"

Section 265(1)(a) of the Planning and Development Act 2000 (the PDA 2000) provides:
"Nothing in this Act shall affect the validity of anything done under the Local Government (Planning and Development) Acts, 1963 to 1999, or under any regulations made under those Acts."

Furthermore, Article 11 of the Planning and Development Regulations of 2001 provides: "Development commenced prior to the coming into operation of this Part and which was exempted development for the purposes of the Act of 1963 or the 1994 Regulations, shall notwithstanding the repeal of that Act and the revocation of those Regulations, continue to be exempted development for the purposes of the Act."

As such, the construction of the Dunn's Park outfall infrastructure was, and remains, exempted development. No works have been carried out which would require a new grant of planning permission under the PDA 2000.

A new planning permission under the PDA 2000 for the continued use of the Dunn's Park outfall is also not required, as the outfall has been used to discharge effluent (both treated and untreated) from Youghal on a continuous basis since it was originally constructed in the 1970's. In this regard, Dunn's Park has been used as the primary discharge outfall for the Youghal WWTP since it commenced operation on or about 18 December 2017.

On the basis of the above, the construction of the Dunn's Park outfall infrastructure was, and remains, an "exempted development" and its continued use is authorised. No further grant of planning permission or declaration of exempted development is required.

Furthermore, the Wastewater Discharge Licence Review is not an application "that involves development or proposed development for which a grant of permission is required" within the meaning of Regulation 16(3A) or Regulation 18(3A) of the Waste Water Discharge Regulations 2007 to 2020.

If any future works or change of use is needed, Irish Water will seek the appropriate statutory consents (including planning permission, if required) for such development.

Submit an Environmental Impact Assessment Report, in accordance with Regulation 17 of the European Union (Waste Water Discharge) Regulations 2007 to 2020.

It is proposed that an EIAR Scoping Request will be submitted to the Agency by 3rd December at the latest requesting the Agency for an opinion in writing on the scope and level of detail of the information required to be included in the EIAR as per regulation 17C(1) of the Waste Water Discharge Regulations 2007 to 2020.

Yours sincerely,

Sheelagh Flanagan
Sheelagh Flanagan
Environmental Strategy