

# An Bord Pleanála



## Inspector's Report

### SECTION 5 REFERRAL

**FILE NO:** 09 RL 2742

**QUESTION:** Whether the deposition of stable non-reactive hazardous waste at Drehid Waste Management Facility is or is not development and is or is not exempted development at Drehid Waste Management Facility, Carbury, Co. Kildare.

**PLANNING AUTHORITY:** Kildare County Council

**REFERRER:** Bord Na Mona

**INSPECTOR:** Breda Gannon

**DATE OF SITE INSPECTION:** Not Inspected

**APPENDIX 1** Planning History

## **INTRODUCTION**

This is a referral made by Kildare County Council in accordance with Section 5 of the Planning and Development Act, 2000.

## **SITE LOCATION AND DESCRIPTION**

The site comprises an existing waste landfill facility within the confines of Timahoe Bog in the north of County Kildare. It lies c 18 km northwest of Naas and is accessed by a purpose built access road off the R 403.

## **PLANNING HISTORY**

1. **PL 09.212059 (04/371)** – Permission granted for an engineered landfill.
2. **PL 09 PA 0004** –Permission granted for extension and intensification of the Drehid Waste Management Facility.

## **DECLARATION**

A request was received by Kildare County Council from Bord Na Mona on January 29<sup>th</sup>, 2010 for a declaration pursuant to Section 5(1) of the Planning and Development Act, 2000-2009, whether a proposal is considered ‘development’ under the Planning and Development Acts and would require an application for planning permission.

The proposal is to accept stable non-reactive hazardous waste (SNRHW) including bound asbestos, for disposal at the Drehid Waste Management Facility.

The County Council did not issue an opinion on the question posed.

## **THE DEVELOPMENT**

Bord Na Mona proposes to accept 9,000 tonnes of stable non-reactive hazardous waste at the facility. The waste will be deposited in a separate self contained cell within the landfill and no biodegradable non-hazardous waste will be accepted in this cell.

## **THE PLANNING AUTHORITY’S REPORT**

The planning authority states that the question posed is a complex one and relates to a site which has been the subject of a planning application (04/371) which was accompanied by an EIS and an application to An Bord Pleanála under the Planning and Development (Strategic Infrastructure) Act 2008.

While the planning application and the EIS are available for the original application the documents relating to the application to An Bord Pleanála are not. Due to these deficiencies and to speed up the process, it is considered that the matter should be referred to the Bord under section 5(4) of the Act.

## **THE REFERRER’S CASE**

The submission by Bord Na Mona can be summarised as follows:

- Under the existing planning permission (09.PA.0004) the landfill accepts ‘*non-hazardous residual municipal waste*’.
- Asbestos waste is a hazardous waste. Under Article 6 (c)(iii) of the Landfill Directive (1999/31/EC) certain hazardous wastes can be deposited in non-hazardous landfills, provided they are stable and non-reactive.
- The *Waste Acceptance Criteria Decision* (2003/33/EC) (“WAC”) states that asbestos waste can be disposed of in non-hazardous landfills in accordance with the requirements of section 2.3.3 9 (see text).
- The WAC does not specify any limit to the amount of SNRHW that may be deposited at a non-hazardous landfill before that landfill must be re-classified as hazardous. The EPA *Technical Guidance of the Landfilling of Asbestos Waste* (December 2006) have taken the view that where the landfill proposes to accept more than 10% or 50,000 tonnes (whichever is the least) of stable non-reactive hazardous waste its classification will change to hazardous.
- The 9,000 tonnes that Bord Na Mona proposes to accept at the landfill is less than 10% of the permitted annual intake. Therefore Bord Na Mona can accept this volume of waste and remain a ‘non-hazardous landfill’.

### **RELEVANT LEGISLATION.**

In order to assess whether the development is or is not development, or, is or is not exempted development regard must be had to the following items of legislation.

#### **Planning and Development Act, 2000**

**Section 3 (1)** of the Planning and Development Act, 2000 defines ‘development’ as

*“the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”.*

‘Works’ are defined in **Section 2** as including “any act or operation of construction, excavation, demolition, extension, repair or renewal”.

Under the provisions of **Section 3(2)(iii)**

*“where land becomes used for the following purpose*

*the deposition of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders waste, rubbish or debris,*

*the use of the land shall be taken to have materially changed”.*

**Section 4** details exempted development for the purposes of the Act.

#### **Planning and Development Regulations, 2001**

**Article 6** of the Planning and Development Regulations, 2001 relates to exempted development and **Article 9** refers to restrictions on exemption.

**Article 10** refers to change of use and exempted development provisions.

## ASSESSMENT

The question arising for determination by the Board is whether the acceptance of certain hazardous waste including bound asbestos at the existing Drehid waste management landfill facility is or is not development, or, is or is not exempted development.

It is clear that the deposition of waste constitutes development within the meaning of section 3 of the Act. However, in this case, Bord Na Mona has permission to deposit waste within the existing landfill facility. Other than providing a dedicated cell for the hazardous waste it would appear that significant additional works are not required. I accept that this limb of the definition of 'development' may be ignored, as contended by Bord Na Mona.

The definition of 'development' under section 3(1) also includes the making of a material change in the use of the land. Permission to accept waste at the facility is subject to a limitation i.e. acceptance of non-hazardous residual municipal waste only. The question that arises, therefore, is whether the acceptance of stable non-reactive hazardous waste including asbestos will involve a material change in the use of the land requiring planning permission.

Bord Na Mona argues its case that the proposal would not constitute a material change of use on the basis that there will be no modifications required to site infrastructure apart from redesigning already permitted cells for a particular waste type. It is also stated that there will be no increased health and safety risk or increased impact on environmental media such as surface water, groundwater, air etc, and no potential for odour and landfill gas emissions or risk of settlement.

Bord Na Mona refers to the provisions of the Landfill Directive (1999/31/EC) and the Waste Acceptance Criteria Decision (2003/33EC) in this regard. The Directive refers to the deposition of hazardous wastes in non-hazardous landfills provided they are stable and non-reactive. The latter states that asbestos waste can be deposited in non-hazardous landfills in accordance with the certain requirements. Reference is also made to the EPA's Technical Guidance and that the classification of the landfill remains unchanged and that its designation would only be altered if tonnages accepted increased to 50,000 tonnes or 10% of total intake (whichever is the least).

Notwithstanding the arguments made, the Board will note that both permissions granted were for a landfill facility/extension and intensification of the landfill that would accept non-hazardous residual municipal waste only. Both applications, which included Environmental Impact Statements, were assessed on that basis. It is my opinion that the proposed acceptance of stable non-reactive hazardous waste would be inconsistent with the use specified in these permissions and accordingly would involve a change of use, which is material in planning terms. The deposition of hazardous waste would give rise to fresh planning considerations/impacts which would not been taken into consideration in the original proposal.

In this regard I draw the attention of the Board to the EPA Technical Guidance document which states that *'the risk profile associated with stable non-reactive hazardous waste is not normally attached to a conventional non-hazardous waste facility'* and that *'the environmental risk profile for the site changes when hazardous waste is accepted'*. The waste does not degrade and there are different hazards,

implications for future land use and management procedures following closure etc, not associated with non-hazardous waste.

I consider that the Board should conclude that the proposal constitutes 'development' as defined under section 3 (1) of the Act.

Since there are no provisions under the Act or the Regulations as amended, permitting a material change as proposed, it is concluded that the development is not exempted development.

### **RECOMMENDATION**

In the light of the above, I recommend that the Board should decide that the acceptance of stable non-reactive hazardous waste including bound asbestos at the existing Drehid Waste Management Facility is development and is not exempted development.

I recommend an order in the following terms.

### **ORDER**

**WHEREAS** a question has arisen as to whether the acceptance of stable non-reactive hazardous waste including bound asbestos at the existing Drehid Waste Management Facility Co Kildare is development and is not exempted development.

**AND WHEREAS** Kildare County Council referred the question for decision to An Bord Pleanala on March 4<sup>th</sup>, 2010:

**WHEREAS** An Bord Pleanala, in considering this reference, had regard particularly to: -

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended.
- (b) Article 6, 9 and 10 of the Planning and Development Regulations, 2001
- (c) The planning history of the lands including An Bord Pleanala decisions PL 09.212059 and 09 PA0004.

**Whereas**, An Bord Pleanala in this case has concluded that, in this particular case :-

- (a) That the acceptance of stable non-reactive hazardous waste including asbestos at the existing non-hazardous residual landfill facility constitutes development involving a material change of use within the meaning of section 3 of the Act.
- (b) That the development does not come within the scope of the exempted development provisions of the Planning and Development Act, 2000 as amended or the Planning and Development Regulations, 2001, as amended .

Now therefore, An Bord Pleanála, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the acceptance of stable non-reactive hazardous waste including bound asbestos is development and is not exempted development.

Breda Gannon  
Inspector  
August 13<sup>th</sup>, 2010