

Circular Letter PD 2/07 and NPWS 1/07

To all County and City Managers, Directors of Services for Planning, Town Clerks

**Compliance Conditions in respect of Developments requiring
(1) Environmental Impact Assessment (EIA); or
(2) having potential impacts on Natura 2000 sites.**

A Chara,

I have been asked by the Minister for the Environment, Heritage and Local Government, to refer to compliance conditions permitted under section 34(5) of the Planning and Development Act, 2000 (as amended by section 8(2) of the Planning and Development (Strategic Infrastructure) Act, 2006).

Compliance conditions

The section provides that conditions to a planning permission may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination.

Environmental Impact Assessment

It is a requirement of the Environmental Impact Assessment (EIA) Directive (85/337/EEC, as amended) that adequate information on the potential effects of a proposed development covered by the Directive, and information on any necessary mitigation measures, is supplied as part of the Environmental Impact Statement (EIS) for the development, insofar as it is relevant or reasonable to require the developer to compile the information (Article 5).

Natura 2000 sites

In relation to Special Areas of Conservation (SAC) and Special Protection Areas (SPA), it is a requirement of the Habitats Directive ((92/43/EEC) that the competent consent authority, which in this case is the planning authority or An Bord Pleanála on appeal, must ensure that a proposal which is likely to have a significant effect on an SAC or SPA, is authorised only to the extent that the authority is satisfied it will not adversely affect the integrity of the area.¹

Where a proposed development is likely to have adverse effects on the integrity of a “non priority” site of international importance for nature conservation, permission should only be granted where there is no alternative solution and where there are imperative reasons of overriding public interest in favour of granting permission, including those of a social or economic nature.

¹ The legal context is the ruling of the European Court of Justice in Case C-127/02, Landelijke Vereniging tot Behoud van de Waddenzee, in which the Court clarifies how assessment and decision-making should be carried out to comply with Article 6(3) of the Directive. The Court inter alia states that:

“Under Article 6(3) of Directive 92/43, an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site’s conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications of [the development] for the site concerned in the light of the site’s conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.



Where the site is of “priority” importance (which are indicated in the Annex I of the Habitats Directive with an asterix), permission should only be granted on the basis of reasons of human health and public safety.

Measures to prevent negative potential impacts should be incorporated into a project where the need arises, to minimise the impact of a plan or project on the site. For example, mitigating measures might refer to phases in construction to avoid particularly sensitive phases in the calendar (breeding season of a species) or types of tools that may be used in sensitive habitats (avoidance of use of "sausage machines" in peatland habitat). In certain cases the provision of compensatory sites may also be proposed, as part of the application. Compensatory measures (improving or recreating habitat outside a Natura site) are a last resort and may be considered only when a decision has been taken to proceed with a project or plan despite its negative impact on the site and having regard to every proposed mitigating measure. This can happen only in the very exceptional circumstances set out in Art 6(4) of the Directive.

It is clear from the above that the planning authority must have before it adequate information on the potential effects of the proposed development, including any proposed mitigation measures, when taking its decision.

Restriction on use of compliance conditions

Accordingly, under no circumstances should planning authorities use compliance conditions to:

- Complete an inadequate EIS,
- Ensure the adequacy of information supplied by a developer in an application for development having a potential impact on a site of international importance for nature conservation, i.e., SAC or SPA, or
- In either of the above cases to request the development of appropriate mitigation measures.

In any such case where a developer has not provided adequate information in respect of environmental or natural heritage impacts or has not supplied adequate information on the nature or impact of appropriate mitigating measures, the appropriate course for the planning authority is to require the developer to submit further information in accordance with article 33 of the Planning and Development Regulations, 2001.

Appropriate compliance conditions

It is appropriate to attach compliance submissions to monitor the effectiveness of proposed mitigation measures in relation to known environmental effects, or mitigation measures proposed in an EIS that must be implemented. Planning authorities should however ensure that the developers are applying correctly any mitigation measures proposed in the application, in a way that minimises the resource implications for the authorities.

The draft Development Management Guidelines, issued for consultation in November 2005, give general advice on the appropriate use of such conditions.

Application to local authority own development

Planning authorities should also have regard to this circular in the context of any proposed development which it intends to submit for approval to An Bord Pleanála, in the case of a development requiring EIA, or in any case involving Part 8 of the Planning and Development Regulations 2001.

Guidance on the application of the Habitats Directive

You should note that by the end of this year it is intended to produce a general guidance document on the issues to be considered by consent authorities when considering implications for Natura 2000 sites.

Queries in relation to Natura 2000 sites should be addressed to the local wildlife ranger's office. Contact details are available from the National Parks and Wildlife Service of the Department, Ely Place, Dublin 2 (Tel: 01-647 3000 Lo-Call: 1890 321 421).

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Planning Section