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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Louth County Council**

**Planning Register Reference Number: 211499**

**Appeal** by Patricia Fuentes and others of Rathescar, Dunleer, County Louth and by others against the decision made on the 24<sup>th</sup> day of March, 2022 by Louth County Council to grant subject to conditions a permission to Michael Callan care of C.L.W. Environmental Planners Limited of The Mews, 23 Farnham Street, Cavan in accordance with plans and particulars lodged with the said Council.

**Proposed Development:** Construct four number poultry houses together with roofed/enclosed service yard, one number office, one number generator store and one number bin/general purpose store, along with all ancillary structures (to include gas storage tanks, three number soiled water tanks, four number meal storage bins and the provision of an on-site wastewater treatment system and percolation area) and associated site works (to include new/upgraded site entrance and internal laneway and provision for four number passing bays on the local public road) associated with the development at Rathescar Middle/Gunstown/Whiteriver, Dunleer, County Louth. This application relates to a development which is for the purposes of an activity requiring a licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

### **Reasons and Considerations**

Having regard to:

- (a) the policies and objectives set out in the Louth County Development Plan 2021-2027 which support agriculture,
- (b) the agricultural nature of the proposed development in a rural location, where such a use is appropriate,
- (c) the pattern of development in the area,
- (d) the fact that the proposed development will be subject to a licence from the Environmental Protection Agency, and
- (e) the requirements of the European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2022 (SI No. 113 of 2022), as amended,

it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, would generally be acceptable in terms of traffic safety and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **Appropriate Assessment Screening**

The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended. Having carried out a Stage 1 Appropriate Assessment Screening of the project, it was concluded that it has the potential to have a significant effect on Stabannon-Braganstown Special Protection Area (site code 004091), Dundalk Bay Special Protection Area (Site Code 000455) and Dundalk Bay Special Area of Conservation (Site Code 004026).

Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of these sites in light of their conservation objectives.

## **Appropriate Assessment**

Following a Stage 2 Appropriate Assessment, it has been determined that subject to mitigation (which is known to be effective) the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site Dundalk Bay Special Protection Area (Site Code 000455) and Dundalk Bay Special Area of Conservation (Site Code 004026) or any other European site, in view of the sites conservation objectives.

This conclusion is based on:

- A full and detailed assessment of all aspects of the proposed project including proposed mitigation measures.
- Detailed assessment of in combination effects with other plans and projects including historical projects, current proposals and future plans.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the stated European sites.

## **Environment Impact Assessment**

The Board completed an Environmental Impact Assessment of the proposed development. The Board considered that the Environmental Impact Assessment Report (EIAR), supported by the documentation submitted in the application adequately considers alternatives to the proposed development, and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Having regard to the examination of environmental information contained within the Inspectors report, to the Environmental Impact Assessment Report and supplementary information provided by the applicant and the submissions from the planning authority and the appellant, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

### **Soils and Geology:**

It is proposed that poultry litter will be moved off-site to mushroom compost yards by an approved contractor. A letter from Chicken Litter Re-cycling Co-op Society Limited (CLR Co-op) is included in Appendix 7 of the Environmental Impact Assessment Report and provides details of contractors and compost yard confirmation - stating that poultry litter will be delivered to named composting facilities in Kildare, Wexford and Down and therefore the Board do not consider that a risk of water pollution arises, subject to an appropriate arrangement for the storage of manure within the poultry house.

Subject to the allocation and utilisation of organic fertiliser in accordance with the obligations of the developer and the recipients under European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 SI No. 113 of 2022, as amended, the Board consider that no significant adverse effects in respect of soils and geology are likely to arise as a result of the proposed development itself, or as a result of the land spreading of organic fertiliser arising.

## **Water:**

Having regard to:

**Water Supply** - the separation distances from residences or other premises which may be using wells, the nature of the aquifer and the design of the drinking water system which minimises leakages in the interests of maintaining dry manure, the Board consider the water supply proposals to be acceptable

**Surface Water and Soiled Water** – the Board note that land spreading of organic fertilisers must be undertaken in accordance with the SI No.113 of 2022 European Communities (Good Agricultural Practice for the Protection of Waters) Regulations 2022, as amended. These regulations deal with such matters as storage facilities for effluent and soiled water (minimum capacity), periods when their application to land is prohibited, minimum distances from wells, rivers etc, to be adhered to in spreading, the manner of application (e.g. not by upward-facing splash plate), keeping records of export to other named farmers, keeping records of use of chemical fertilisers, the duty of an occupier of land to prevent the application of fertilisers in excess of crop requirement (related to soil tests and stocking rates), etc. and are satisfied that the proposal provides adequate storage capacity and will, subject to compliance with SI No.113 of 2022 as amended, adequately cater for soiled water.

**Landscape and visual amenity:** potential impacts on the landscape and visual amenities of the area will be adequately mitigated by the capacity of the receiving environment and the existence of other similar type industrial structures in the business park area, and separation from sensitive receptors in the area, such as residential properties, along with landscaping proposals for the site.

## **Residential amenity:**

### **Visual amenity**

The Environmental Impact Assessment Report references non-agricultural properties in Section 6.12 and 7.12 which relates to material assets. It states that there are no residential dwellings within 150 metres, and that there will be no adverse visual impact on the local area.

### **Odour**

The Board considered the Air Quality Impact Assessment and noted that it Given that the calculated 98<sup>th</sup> percentile odour from this 'steady state' operation at the closest residential receptors is well below the acceptable limit of 3.0 OUE/m<sup>3</sup> and that the proposed development will require a Licence from the EPA, and as a result odour emissions will be subject to licence conditions and associated monitoring and reporting requirements.

Furthermore, the closest residential receptors are circa 410 metres to the northwest of the proposed poultry houses and that the appeal site is located within a strongly rural area, where odour emissions associated with agricultural activities are to be expected and are likely to be commonplace, therefore the Board were of the opinion that applicant has demonstrated that the proposed development would not seriously injure the residential amenities of property in the surrounding rural area by reason of odour emissions.

**Climate:** Construction and operation of the proposed development would give rise to some greenhouse gas emissions. Section 5.2 of the submitted Natura Impact Statement describes the assessment and mitigation measures proposed to limit atmospheric emissions including ammonia and nitrogen. The Natura Impact Statement concluded that with mitigation the proposed development will have no impact upon the Stabannon-Braganstown Special Protection Area (site code 004091) which is 7.1 kilometres from the application site.

A SCAIL model (Simple Calculation of Atmospheric Impact Limits) was run to determine the potential impacts on the Natura sites.

The Air Quality (Ammonia) Impact Assessment (AQIA), undertaken by Irwin Monitoring Ireland, utilised Aermid dispersion modelling software, and five years of meteorological data from Ballyhaise Co. Cavan (closer to the site rather than Dublin Airport). Eight dwellings were assessed in the vicinity of the site. The maximum predicted value is 2.1 Oue/m<sup>3</sup>, which occurs at receptor R4. The Board are satisfied that this is less than the limit value of 3.0 Oue/m<sup>3</sup> set out in the EPA guidance document 'Odour Impacts and Odour Emission Control Measures for Intensive Agriculture' (2001).

#### **Vehicular traffic movements:**

The Environmental Impact Assessment Report spreads the traffic generation over a seven-week cycle to provide average weekly figures. It is stated that the proposed development would generate 262 vehicles over a typical seven-week cycle equating to 5.25 vehicles per day, with volumes of generated traffic rising to 14 vehicles during the bird removal process.

The Board do not consider that the average or peak level of traffic generation would be so great as to result in any unacceptable direct or indirect impacts in terms of traffic.

The Board noted the Roads and Traffic Report and Road Layout drawing number F2102-P05 showing HGV Auto Track to Bay's and that the proposed development will provide for a new bell mouthed agricultural access, and the local roads in the vicinity are relatively lightly trafficked, with good access to the Regional and National Road network.

The Board considered that the use of the lay-bys and a prohibition of a left turning lane to the east of the site would adequately provide for the traffic associated with the proposed development and will therefore improve the road for all users would not seriously compromise the safety and convenience of road users.



## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 4<sup>th</sup> day of March 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The best practice methods, mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, Noise Impact Assessment, Air Quality Impact Assessment, Traffic Impact Assessment, Natura impact statement, and other plans and particulars submitted with the planning application, as amended by the further plans and particulars submitted on the 4<sup>th</sup> day of March 2022, shall be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity and protection of the environment.

3. Details of the finishes of the poultry houses and feed silos shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In order to allow the planning authority to assess the impact of these matters on the visual amenity of the area before development commences and in the interest of orderly development.



4. The poultry houses shall be used only in strict accordance with a management schedule which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The management schedule shall be in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2022, as amended, and shall provide at least for the following:
- (a) Details of the number of birds to be housed.
  - (b) The arrangements for the collection, storage and disposal of manure, effluent, dead animals and waste products.
  - (c) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

**Reason:** In order to avoid pollution and to protect residential amenity.

5. All liquid effluent and any other contaminated run-off generated by the proposed development shall be conveyed through properly constructed channels to the proposed storage facilities and no effluent or other contaminated run-off shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

**Reason:** In the interest of public health.

6. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to the proposed swale and soakaway system and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent tanks or to the public road.

**Reason:** In order to ensure that the capacity of effluent storage tanks is reserved for their specific purposes.

7. Poultry manure generated by the proposed development shall be disposed of by means acceptable in writing to the planning authority. Disposal of poultry manure shall be in accordance with the requirements of the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2022, as amended. No land spreading of organic fertiliser generated from the operation of the proposed poultry houses shall take place.

**Reason:** To ensure the satisfactory disposal of waste material, in the interests of amenity, public health and to prevent pollution of watercourses.

8. Organic fertiliser shall be taken offsite by the contractor/haulier as stated in the application. This contractor must be registered with the Department of Agriculture Food and Marine and the organic fertiliser shall be utilised in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022, as amended.

**Reason:** In the interests of environmental protection and public health.

9. Details of all appropriate structural upgrades of the road for a minimum distance of 25 metres either side of the entrance shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** Due to the nature of the development and the significant increase of HGV traffic volumes on the Local Secondary Road, (LS-6270), particularly during the construction period and specifically the increase in HGV turning manoeuvres at the proposed vehicular entrance.

10. Access to the proposed poultry houses shall be only by the route detailed in Figure 6.1 in Appendix No.23 of the Environmental Impact Assessment Report received on the 17<sup>th</sup> day of December, 2021. This access route shall be utilised for both the construction and operation of the proposed poultry houses.

**Reason:** In the interest of traffic safety.

11. Adequate visibility for a minimum distance of 75 metres on either side of the site entrance from a point 4.5 metres back in from the edge of the road carriageway over a height of 1.05 metres – 0.6 above road level at the site entrance shall be made available as indicated on drawing number PL09 received by the planning authority on the 4<sup>th</sup> day of March, 2022.

**Reason:** In the interest of traffic safety.

12. No impediment to visibility shall be placed, planted and/or to remain within the visibility triangle. Where it is necessary to remove hedges/banks/walls/service poles to provide adequate sightline visibility, this work must be completed prior to the commencement of any development works on site. Any proposed new boundary hedge/wall shall be located behind the visibility splay. Any pole, column, vegetation, tree or sign materially affecting visibility must also be removed/relocated with consent obtained from the relevant authority to do so.

**Reason:** In the interest of traffic safety.

13. The spreading of all soiled water from washing internally in the houses on land by the applicant or third parties shall be undertaken in accordance with the systems of regulatory control implemented by the competent authorities in relation to national regulations pursuant to Council Directive 91/676/EEC (the Nitrates Directive) concerning the protection of waters against pollution caused by nitrates from agricultural sources.

**Reason:** In the interest of environmental protection.

14. (a) No work shall commence on site until the visibility splays and the lay-bys as detailed in Appendix No.23 of the Environmental Impact Assessment Report and as indicated on submitted drawing numbers F2102-P02, PL08, PL08a, PL08b and PL08c received by the planning authority on the 4<sup>th</sup> day of March, 2022 have been constructed to the written satisfaction of the planning authority.
- (b) The area within the visibility splay shall be cleared to provide a level surface no higher than 250 millimetres above the level of the adjoining carriageway and shall be retained and kept clear thereafter.
- (c) The lay-bys shall be suitably surfaced and shall not impact on the existing boundary fence to the Whiteriver Landfill Site and shall not encroach on the Landfill site in any way. The materials to be used to construct the lay-bys in addition to the construction methodology shall be submitted for the written agreement of the planning authority prior to commencement of development.

**Reason:** In the interests of traffic safety and proper planning and development.

15. The applicant shall be responsible for the full costs of repair in respect of any damage caused to the adjoining public road arising from the construction work and shall either make good any such damage forthwith to the satisfaction of Louth County Council or pay to the Council the cost of making good any such damage on a demand thereof being issued by the Council.

**Reason:** In the interests of traffic safety and proper planning and development.

16. Surface water from the site shall be disposed of within the boundaries of the site and shall not discharge onto the public road or adjoining property. Road drainage across the entrance and along the public road shall not be impeded or interrupted in any way. The applicant must construct the surface water drainage as detailed in Appendix No. 20 of the Environmental Impact Assessment Report and manage and operate the whole of this system as long as the proposed facility remains in operation.

**Reason:** In the interests of traffic safety and proposed planning and development.

17. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- (a) A plan to scale of not less than 1:500 showing –
  - (i) the species, variety, number, size and locations of all proposed trees and shrubs,
  - (ii) details of screen planting, and
  - (iii) hard landscaping works.

(b) A timescale for implementation.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interests of residential and visual amenity.

18. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including traffic management measures, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

19. The developer shall prepare, update accordingly and communicate to all site personnel a Construction Environmental Monitoring Plan (CEMP). The Construction Environmental Monitoring Plan shall include, but not be limited to, operational controls for dust, noise and vibration, waste management, protection of soils and groundwaters, protection of flora and fauna, site housekeeping, emergency response planning, site environmental policy, environmental regulatory requirements and project roles and responsibilities. The Construction Environmental Monitoring Plan shall be treated as a live document.

- (a) Dust emissions shall not exceed 350 milligrams per square metre per day.

- (b) All refuelling shall take place in a designated refuelling area at least 30 metres from watercourses, details of same to be included in the Construction Environmental Monitoring Plan.
- (c) All hydrocarbons, chemicals, oils, et cetera, shall be stored in a dedicated bunded area at least 30 metres from watercourses and capable of storing 110 per cent of the container/tank capacity.
- (d) All permanent tanks shall be bunded and capable of storing 110 per cent of the tank's capacity.
- (e) The applicant shall ensure adequate supply of spill kits and hydrocarbon absorbent pads are stocked and maintained onsite for both construction and operational stage.
- (f) All waste generated during construction, operation or decommissioning, including surplus excavation material to be taken off-site, shall be only recovered or disposed of at an authorised site which has a current Waste Licence or Waste Permit in accordance with the Waste Management Acts, 1996, as amended. This shall not apply to the reuse of excavated material within the applicant's site boundary. The applicant shall retain and make available for inspection, all records relating to the movement, recovery or disposal of waste from the development site.

**Reason:** In the interests of public health, sustainable waste management, orderly development and to provide for the protection of the environment.

20. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the amenities of property in the vicinity.



21. (a) The proposed effluent treatment and disposal system serving the proposed office building shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses – Environmental Protection Agency, 2021. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) Within three months of the first occupation of the office building, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the Environmental Protection Agency document.

**Reason:** In the interest of public health.

22. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred

to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

23. The developer shall register with the Environmental Protection Agency any water abstractions that meet the relevant registration thresholds for water abstraction under the (Water Policy) (Abstraction Registration) Regulations 2018 (S.I. No. 261 of 2018) or the Water Environment (Abstractions and Associated Impoundments) Act 2022 if/when commenced.

**Reason:** In the interests of public health and the protection of waters.

  

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Liam Bergin

Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.

Dated this 24<sup>th</sup> day of October 2024.