



An
Bord
Pleanála

Board Order
ABP-317623-23

Planning and Development Acts 2000 to 2022

Planning Authority: Tipperary County Council

Planning Register Reference Number: 22660

Appeal by Tom and Eileen Acheson of Ha'penny Well, Orchardstown, Clonmel, County Tipperary against the decision made on the 27th day of June 2023 by Tipperary County Council to grant, subject to conditions, a permission to Charlie Purcell care of NRG Limited of Main Street, Ballyporeen, County Tipperary in accordance with plans and particulars lodged with the said Council:

Proposed Development: Two number poultry houses, services rooms, feed bins, wash collection tank, roof mounted solar panels, access roadway, wastewater treatment system, percolation area and associated works, at Caherclogh, Lisronagh, Clonmel, County Tipperary. The proposed development was revised by further public notices received by the planning authority on the 4th day of May 2023.

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

It is considered that the development complies with the policies and objectives of the Tipperary County Development Plan 2022-2028, and that the development does not have an adverse impact on the character of the area or the amenities of adjoining properties. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board decided that:

1. In relation to the issue of Ammonia, the Board concurred with the methodology used, and in relation to the fact that the appellants dwelling was not identified or included as a worst-case receptor, the Board concluded that:
 - as the appellants dwelling is not downwind of prevailing or frequently occurring conditions, and
 - this significantly mitigates the impact of odour emissions, such that it's omission from a worst-case scenario is appropriate as the frequency of impact is approximately 3%, and
 - the likelihood of a maximum temperature of 30 degrees occurring at the same time as a prevailing wind in the necessary direction is such to make the occurrence to be of tolerable frequency,

especially given the rural nature of the proposed development, where tolerable odours would be considered to be an expected nuisance.

2. The Board noted the location of wastewater treatment system percolation area, and considered addressing this issue by means of condition (1) would address the Inspectors concerns in relation to it's unacceptable original siting under a road and turning area.
The Board also considered that the inclusion of a condition (Condition 11) to ensure that the designed, located and constructed Waste Water Treatment Plant serving the staff welfare facilities within the poultry houses shall discharge to a septic tank and percolation area in accordance with the Environmental Protection Agency Code of Practice 2021 – Domestic Waste Water Treatment Systems, was sufficient to meet the requirements of the Code of Practice and that the applicant must satisfy the planning authority that this is the case.
3. This application for planning permission relates to the site of the activity as indicated within the red line boundary, that is, the construction of two poultry houses and associated works, and does not extend to the lands on which organic matter may be used as fertiliser. The Board notes that the activities that can take place within European sites are restricted by legislation. All persons must obtain written consent from the relevant Minister before performing particular operations on, or affecting, particular habitats where they occur on lands / waters within European sites. Hence, further regulatory controls exist for the spreading of fertilisers within European sites. In this case, there are regulatory controls in place in relation to the transport and use of organic fertiliser as fertiliser on land beyond the red line boundary. While the Board is not a competent authority under the Nitrates Regulations and has no role in the enforcement of such activities, the Nitrates Regulations make it possible for the Department of Agriculture, Food and the Marine to know

and take account of the additional input of nitrogen and phosphorous from the activity, with a view to ensuring that there is downstream environmental pollution. It is therefore considered that the regulatory systems in place will ensure the cumulative impacts as a result of the use of organic fertiliser on land from this activity will not have a significant effect on any European sites.

The Board, therefore, considers that the use of poultry litter and wash water as fertiliser in accordance with the Nitrates Regulations will not cause environmental pollution and is satisfied beyond reasonable scientific doubt that use of wash water and poultry litter as fertiliser will not have a significant effect on any European sites.

4. In relation to the Appropriate Assessment Screening determination and Appropriate Assessment overall conclusion completed by the Inspector (and corresponding recommended refusal reason number 3) the Board had regard to the assessment of the planning authority and did not concur with the Inspector's consideration that adverse effects on the site's integrity could not be excluded in relation to land spreading, construction related silt, and effluent discharges.

Appropriate Assessment: Stage 1:

The Board considered the Natura Impact Statement submitted with the application, and all the other relevant submissions on file, and carried out an Appropriate Assessment in relation to the potential effects of the proposed development on the Lower River Suir Special Area of Conservation (Site Code 002137). The Board concluded that the Lower River Suir Special Area of Conservation (Site Code 002137) is the only European Site in respect of which the proposed development has the potential to have a significant effect in view of the Conservation Objectives for the site and that Stage 2 Appropriate Assessment is, therefore, required.

Appropriate Assessment: Stage 2:

The Board considered the Natura Impact Statement, and all the other relevant submissions on file, and carried out an Appropriate Assessment of the implications of the proposed development on the Lower River Suir Special Area of Conservation (Site Code 002137) in view of the site's Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's Conservation Objectives using the best scientific knowledge in the field. In completing the assessment, the Board considered, in particular, the following:

- (i) the re-location of the wastewater treatment system away from the Lisronagh stream in compliance with the Environmental Protection Agency code of practice (2021) would protect water quality,
- (ii) the implementation of the mitigation measures set out in the applicants Natura Impact Statement with fine-scale details to be agreed prior to the commencement of development with the planning authority, which would protect water quality from construction related silt, and
- (iii) the transport of organic waste and its spreading on lands as fertiliser in compliance with the Nitrates Regulations as regulated by the Department of Agriculture, Food and the Marine would also protect water quality from indirect impacts. The Board, therefore, considered the proposed development alone and in combination with other projects, would not adversely affect the integrity of the Lower River Suir Special Area of Conservation (Site Code 002137), in view of the site's conservation objectives.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars submitted with the planning application, as amended by further information received by the planning authority on the 20th day of April 2023, subject to agreement with the planning authority regarding the appropriate location, design and planned construction of the domestic wastewater treatment plant prior to commencement of development, 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: To clarify the terms of the permission.

2. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

Reason: To protect the integrity of European Sites.

3. (a) Uncontaminated surface water runoff from roofs and clean paved areas within the yard shall be collected and disposed of directly in a sealed system to adequate stone filled soakpits or to a watercourse, located within the curtilage of the application site or, alternatively, shall be recycled for use in the proposed development. Surface water shall not be allowed flow onto the public road.

- (b) The proposed surface water management system shall be fitted with a petrol interceptor. Details of same shall be submitted to and agreed in writing with the planning authority prior to the commencement of development on site.
- (c) A monitoring chamber (manhole) shall be provided for the monitoring of uncontaminated surface/roof water prior to such water entering any soakaway, drain or watercourse.

Reason: In the interest of orderly and sustainable development and to minimise the volume of farmyard waste generated.

- 4. An intercepting drain (gridded drain) shall be constructed between the entrance piers and drained to soakaways on the site. This drain shall be maintained in good operational order in perpetuity and shall ensure that surface water shall not enter the public road from the site.

Reason: To avoid interference with other properties and to prevent damage to the public road with consequent traffic hazard.

- 5. Prior to development commencing on the poultry houses the roadside boundary shall be setback behind the required sight triangle. The sight triangle is taken from a 4.5 metres setback from the nearside road edge at the centre of the entrance to a point 160 metres away in both directions at the nearside road edge

- (a) Where roadside hedge is removed a new roadside boundary hedge shall be constructed, the new roadside boundary shall compose of an earthen bank to a consolidated height of 1.2 metres that shall be planted with shrubs suitable for hedging and common to the locality (that is, holly, hawthorn, blackthorn, ash, elder, bramble). All

landscaping and planting shall take place in the first planting season following commencement of the development.

- (b) Where appropriate ESB, Telecom poles or services connections on roadside shall be removed and setback to the new fence line in agreement with the service provider.

Reason: In the interest of traffic safety and in the interest of visual amenity.

- 6. All poultry manure generated in the poultry house shall be disposed of off-site. The arrangements for the collection, storage and disposal of poultry manure shall comply with the requirements of the Department of Agriculture, Food and the Marine, Animal By-Products legislative requirements and all planning authority guidance on the protection of sensitive waters including water supply sources. Poultry litter movements off-site shall be recorded, and records shall be maintained on-site and made available to the planning authority on request.

Reason: In the interest of public health.

- 7. There shall be no change/increase in poultry type or numbers of poultry being accommodated at the proposed development without the prior written agreement of the planning authority.

Reason: In the interest of orderly development.

- 8. All oxidisable and galvanised surfaces of the development shall be painted a dark green matt colour or similar dark matt colour and shall be so maintained in perpetuity.

Reason: In the interest of visual amenity.

9. A Construction Environmental Management Plan (CEMP) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The CEMP shall provide, but not be limited to, construction phase controls for dust, noise and vibration, waste management, protection of soils, groundwaters and surfacewaters, site housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

Reason: In the interest of environmental protection, residential amenities, public health and safety and environmental protection.

10. A 1:500 scale landscape plan together with an accompanying planting schedule shall be submitted to the planning authority for written agreement prior to the commencement of development. The scheme shall provide for the planting of native deciduous trees and hedgerows (as appropriate) and such planting shall be implemented during the first planting season following the commencement of the development along the new site boundary to the east of the site. The plan shall also detail the replacement of the roadside hedging that is to be removed in order to provide the required sightlines. The existing trees and shrubs on the site boundaries shall be retained and maintained as a feature of the development except where removal is required to facilitate the development as indicated on the submitted plans.

Reason: In the interests of visual amenity.

11. Noise levels emanating from the proposed development when measured at Noise Sensitive Locations* shall not exceed:

- 55dBA (30 minute LAR) between 0700 and 1900 hours.
- 50dBA (30 minute LAR) between 1900 and 2300 hours.
- 45dBA (15 minute Leq) between 2300 and 0700 hours.

All sound measurements shall be carried out in accordance with ISO Recommendations R 1996 -"Acoustics- Description and Measurement of Environmental Noise". *Noise Sensitive Location: Any dwelling house, hotel or hostel, health building, educational establishment, places of worship or entertainment, or any other facility or area of high amenity which for its proper enjoyment requires the absence of noise at nuisance levels.

Reason: In the interest of protecting amenities.

12. (a) Effluent from the welfare facilities within the poultry houses shall discharge to a septic tank and percolation area. The septic tank and percolation shall be designed, located and constructed in accordance with the requirements of Environmental Protection Agency (EPA) Code of Practice 2021 - Domestic Wastewater Treatment Systems.
- (b) Location, construction and commissioning of the permitted septic tank shall be supervised by a Civil Engineer or appropriately qualified individual, who upon completion of works/commissioning shall submit to the planning authority certification (to include photographs) that the system has been laid out and constructed in accordance with the EPA Code of Practice 2021 - Domestic Wastewater Treatment Systems, within three months of installation.
- (c) The owners/occupiers of the subject site shall be responsible for the maintenance of their septic tank.

Reason: In the interest of public health.

13. The applicant is required to employ a suitably qualified archaeologist, licenced under the National Monuments Act 1930–2014, to monitor all groundworks required for this proposal. Please allow five to six weeks to facilitate the processing of an Archaeological Licence. No groundworks are to take place in the absence of the archaeologist.

Monitoring/groundworks are to take place to the uppermost archaeological horizons only, where they survive. Should features/deposits of an archaeological nature be discovered during the course of monitoring, groundworks shall stop pending further advice from the Department of Housing, Local Government and Heritage (DoHLGH). Please note that all features/archaeological surfaces are to be hand-cleaned and clearly visible for photographic purposes. Section excavation through features to establish their nature and/or extent shall only take place where an archaeological licence is in place and this is agreed in advance with the Licensing Section of the DoHLGH. The features shall be planned and photographed and an interim report submitted to the DoHLGH pending a decision as to how best to deal with the archaeology. The interim report shall also include an archaeological mitigation strategy outlining the preservation in situ and/or archaeological excavation of the features/deposits revealed. The applicant shall note that full archaeological excavation according to best practice will be required, including an excavation reporting and post-excavation analysis, where preservation in situ cannot be achieved. The applicant/developer shall be prepared to be advised by the DoHLGH with regard to any necessary mitigating action as outlined above. The applicant/developer shall facilitate the archaeologist in fulfilling all aspects of this request.

Reason: To ensure the continued preservation, either in situ or by record, of places, caves, sites, features or other objects of archaeological interest.

14. 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.


Liam Bergin

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



Dated this 23rd day of December 2024.