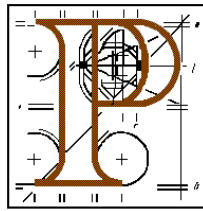


An Bord Pleanála



Inspector's Report

Development: One pig house with ancillary structures (to include 2 no. meal storage bins) and associated site works. An EIS accompanies the application. The application relates to a development which is for the purposes of an activity requiring a licence under part IV of the EPA (licensing Regulations 1994 to 2013).

Site Address: Graigueafulla, Clonaslee, County Laois

Planning Application

Planning Authority: Laois County Council
Planning Authority Reg. Ref.: 14/384
Applicants: Rosderra farms
Type of Application: Permission
Planning Authority Decision: Refuse

Planning Appeal

Appellant: Rosaderra Farms
Type of Appeal: First Party v Refusal
Observers: None
Date of Site Inspection: 27th January 2016

Inspector: **Joanna Kelly**

Appendix 1: Site location plan, Site key Plan and Photographs

Appendix 2: Conservation Objectives for River Barrow and River Nore SAC

1.0 INTRODUCTION

This appeal pertains to a first party appeal against the decision of the Planning Authority to refuse permission for a pig house with ancillary structures in Graigueafulla, Clonaslee, County Laois.

The appeal grounds in this appeal PL.11.245607 are similar to those made under PL.00.245605 and both appeals have been assessed in conjunction with each other.

2.0 SITE DESCRIPTION

- 2.1 The appeal site is located in the townland of Graigueafulla located on the eastern side of a local road which is accessed off the R-422 (Kinnity to Mountmellick). The appeal site is located approximately 2 kilometres north-east of Clonaslee, settlement centre. The site has a stated site area of 1.64h.
- 2.2 There is an existing piggery complex located at this location, the structures of which are located approx. 100m from the local road. This part of the farm houses all of the breeding stock. It is proposed to construct a structure i.e. weaner room beyond the existing structures. The existing structures at this location contain dry sow units, farrowing unit, weaner rooms and 2 gilt rooms. There are also over ground slurry tanks located within the complex.
- 2.3 The Corbally site which is located approx. 300m to the south-west of this appeal site houses all of the pigs produced on the breeding site on transfer to the farm at 35 kg's until they reach a live weight of c. 110-115kg's at which time they are moved to the abattoir. The existing approved activity at this site encompasses an additional 2,800 pigs transferred from a third farm to be reared to market weight on this site. The site subject to this appeal and the appeal site in Corbally (PL.245605) effectively operate as an integrated farm and are subject to an EPA licence.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The application subject to appeal in this instance pertains to the construction of 1 no. dedicated 2nd stage weaner house. The proposed structure has a stated floor area of 1410sq.m. and is to complement the existing weaner rooms on site. The proposed floor plans indicate 5 rooms which are segregated into pens which will house 80-86 weaners. A 1m wide passageway to access the pens has been provided in each room.

I calculate that 3260 weaners can be accommodated within this structure based on floor area.

The EIS sets out that the breeding site is not of sufficient size to supply all of the pigs required by the finishing site, and additional pigs are brought in from another farm. The applicant is seeking to consolidate the farm by providing the required accommodation on the breeding site to produce sufficient pigs to supply the finishing site and consequently ceasing the transfer of weaner pigs into this farm.

4.0 TECHNICAL REPORTS

4.1 Planning report

A planning application was lodged on 21st November 2014.

A notice was issued on 20th January 2015 to the applicant stating that in accordance with section 177T(5) of the Planning and Development Act 2000 as amended, the applicant was required to carry out a Natura Impact Assessment for the proposed development. The notice appears to have been issued subsequent to the preparation and recommendation of the Planner that significant effects cannot be ruled out on the adjacent River Barrow and Nore cSAC due to concerns over water quality results contained in Appendix 10 of the EIS, uncertainty regarding cumulative impacts of the proposed development with existing proposed or approved projects and the uncertainty that exists relating to impacts of the proposed spreading of waste associated with the proposed development.

An NIS was received by Laois County Council on 24th February 2015 along with a copy of the public notice.

A Planning report was prepared in April 2015 and notes responses from Inland Fisheries, Department of Arts, Heritage and the Gaeltacht and the EPA. 2 no. submissions were noted raising concerns about odour, impact on views, traffic, and potential contamination of waters. The Planner considered the principle of development acceptable. The planner was generally happy with the scope and comprehensiveness of the EIS submitted although identified issues that needed to be addressed as follows: surface water sampling, groundwater, land spreading, noise and malodours. The planner considered that the section on material assets in the EIS needed to be revised to show predicted impacts on tourism. Information regarding decommissioning was also considered to be lacking. With regard to AA, the planner outlined details that need to be addressed by the applicant in relation to surface water. The planner recommended that further information be sought.

Further information was submitted to the Planning Authority on 22nd July 2015. The Planning Authority considered the information to be significant and sought revised public notices. The planning assessment sets out that the aim of the application along with the application in Corbally is to improve the

facilities on site to comply with various legislative requirements but also to negate the requirement of having to import pigs in from an outside farm. The planner indicates that the extent of impacts on the cSAC cannot be determined in respect of the land spreading. Reference is made to the Sweetman case and that an Article 6 (3) assessment could not have lacunae and had to “*contain complete, precise and definite findings and conclusions capable of removing all reasonable scientific doubt as to the effect of works...*” and it was concluded that in this instance there remains a significant lacunae as to the impacts of the land spreading. The planner recommended a refusal for 2 no. reasons.

Offaly County Council

No comments regarding the proposal.

Department of Arts, Heritage and the Gaeltacht

It is set out that there appears to be a hydrological connection between the applicant’s site and the cSAC. The PA should satisfy itself there is robust data regarding water quality and nitrogen deposition.

The department in response to the further information set out that the Planning Authority should be satisfied that any potential risk to the water quality of the river Barrow and River Nore cSAC is adequately mitigated. It is set out that “*there appear to be contradictory statements in the documentation provided. It has been stated a number of times that SI 31 of 2014 was screened for AA and SEA. However what was screened was the third Nitrates Action Plan....*”

A further submission dated 11 January 2016 was made to ABP and notes that in the NIS, reference is made to generic conservation objectives for the River Barrow and River Nore SAC however site specific conservation objectives have been available for the site since July 2011. The risk to water quality from land spreading of pig manure has been considered in the EIS however the list of farms does not indicate the location of said farms. The Board should satisfy itself that it has enough data to make a robust decision.

Water Services

No comments regarding applications.

Inland Fisheries Ireland

No objection in principle but refers to Appendix 10 of the EIS and specifically the tables that show results for surface water sampling in 2014. It is set out that “*notwithstanding the failure to specify the form of Phosphorous analysed for, and the failure to provide units of expression for Phosphorous, Ammonia*

and Nitrogen, it can be concluded that for the majority of locations concerned, the water quality results presented typify gross pollution." The Inland Fisheries set out that the majority of locations failed to comply with the standards prescribed under the European Communities Environmental Objectives (Surface Waters) Regulations 2009. The submission concludes by stating that it has to be concluded that the unit is being operated in such manner as to have resulted in serious pollution of the receiving surface water environment and accordingly object to the granting of permission as sought.

A further response was received April 2015 in response to the NIS. It is set out that the majority of the lands on which slurry from the existing and proposed development is to be spread are located such that the EPA biological quality monitoring results referred to do not in fact reflect impacts from such land spreading. The Inland Fisheries board highlights that the NIS states that it is not appropriate to compare the quality of storm water discharges with the Surface Waters Regulations. Compliance with the said standards is mandatory. No evaluation of the impacts of land spreading has been undertaken in the NIS.

EPA Correspondence

The EPA correspondence to the Council on 6th January 2015 indicate that Glanbia Farms limited was issued a IPPC Licence (Register No:560 on the 18th January 2000 for the rearing of pigs. The most recent licence pertaining to this site is IPPC licence Reg. No. P0435-02 issued on 11th December 2000 for the rearing of pigs at Clonsaslee Pig Unit, Corbally, Clonsaslee which was transferred to Rosderra Farms Limited on 12th January 2009. The EPA set out that the activity is now an Industrial Emissions Directive activity and the licence was amended on 18th December 2013 to incorporate the requirements of an IE licence. The licence may need to be reviewed or amended to accommodate the development proposed but the licensee has yet to apply for such. The EPA advised the Council that in accordance with section 87 (1D) (d) of the EPA Acts, the Agency cannot issue a determination on the licence application relating to the development until a planning decision has been made.

In accordance with section 87 of the Environmental Protection Agency Act 1992 as inserted by Article 5 (1F) of the European Union (EIA) (IPPC) Regulations 2012, the EPA was requested to confirm to the Board that the proposed development is such that requires a licence or review of licence and any observations in that regard.

A response was received on 25th January 2016 which sets out that the most recent licence pertaining to the site issue to Glanbia Farms Ltd in 2000 for the rearing of pigs. This licence was transferred in 2009 to Rosderra Farms Ltd.

details of which are on the EPA website. I have enclosed a copy of the licence for the Board's reference. The activity is now an IED activity and the licence was amended in December 2013. The EPA indicate that the EIS appears to address the key points in relation to the environmental aspects of the proposed activity which relate to matters that come within the scope of the agency's functions. The submission indicates that conditions of the licence only pertain to the site and activities such as land spreading cannot be conditioned. The recipient of organic fertiliser is responsible for the management and use of same in accordance with the applicable regulations. Reference is made to a CJEU Case C585/10 and that the expression 'places for sows' must be interpreted as meaning that it includes gilts (female pigs which have already been serviced but not yet farrowed). The applicant should clearly define the numbers of sows, serviced gilts and production pigs housed at each site.

5.0 PLANNING AUTHORITY DECISION

A notification of a refusal of planning permission was issued on 17th September 2015 for two no. reasons as follows:

1. The Planning Authority is not satisfied that on the basis of Appropriate Assessment carried outthat appropriate or adequate considerations has been given to the **effects of the development on the integrity of Special Areas of Conservation in the vicinity of spread lands**, in accordance with Article 6 (3) of the EU Habitats Directive and whether these areas would be adversely affected by the proposed development. The proposed development would therefore **materially contravene objective NH13/001 of the Laois County Development Plan 2011-2017** which states that it is an objective of the plan "to maintain, protect and where possible enhance the conservation value of existing European and national Designated Sites (NHA,SAC and SPA) in the county and any additional sites that may be proposed for designation during the period of this Plan" and would therefore be contrary to the proper planning and sustainable development of the area.
2. The Planning Authority is not satisfied on the basis of the Environmental Impact Assessment carried out on the information contained in the environmental Impact Statement, that appropriate or adequate consideration of the **effects of the proposed land-spreading associated with the proposed development has been carried out in accordance with Article 94 of the Planning and Development Regulations 2001 as amended**. The proposed development would therefore **materially contravene Development Control Standard 53 of the Laois County**

Development Plan 2011-2017 in that all the environmental effects of the proposed development have not been considered and would therefore be contrary to the proper planning and sustainable development of the area.

6.0 APPEAL GROUNDS

The grounds of appeal are summarised as follows:

- The proposed development will make a significant number of positive changes to the infrastructure and operation of the site which will enable the farm to operate to a higher animal welfare and environmental standard.
- The grounds of appeal emphasise that there is an existing authorised practice; that the proposed development and associated improvements in operational practice will actually reduce the volume of organic fertiliser and thus the amount of land-spreading by c. 15% when compared to the level authorised for the past 20 years; customer farmers in this area have been using pig manure from this farm for a long number of years; all farmers are entitled to use organic fertiliser source in accordance with applicable guidelines.
- It is set out that the details submitted and the resulting reduction in authorised manure volume should leave no doubt that the proposed impact on land-spreading from the proposed development can only be positive.
- The reasons for refusal failed to recognise that the existing/proposed development will support nutrient substitution, rather than nutrient addition. The application of fertiliser to land is an essential part of agricultural activity. Customer farmers do not require planning for the use of fertilisers on their lands.
- There is a requirement of the applicant and any farmers in the vicinity which are in receipt of the manure and fertiliser from the piggery to fully comply with the requirements set out in S.I. 31 of 2014 (European Union Good Agricultural Practice for the Protection of Waters) Regulations 2014.
- It is clear that the planner's report agrees with the significant benefits that the proposed development will have.
- The information included in the EIS represents a sample of potential list of customer farmers. The current customer farmers as referred to in the application have been shown to identify that there is capacity in the area within the limitation of S.I. 31 of 2014 to utilise the organic fertiliser to be produced on this farm in a sustainable manner. This list is not exhaustive and any other farmers who have fertiliser requirements

under S.I. 31 of 2014 may be supplied with fertiliser from this farm. These farmers are operating under separate legislation, they are not party to, and/or subject to assessment/approval under this application. This matter has been referred to in previous decisions by ABP PL.02.240879.

- Pig manure is not waste if applied to agricultural land in accordance with nutrient requirements on clearly defined parcels of land, organic fertiliser applied in accordance with S.I.31 of 2014 will be utilised not disposed.
- The fertiliser management plan as contained in the E.I.S is completed in line with Article 16 (2) (a) of S.I. 31 of 2014 which allows a farmer to assume an Index 3 result where no soil test is available. This is the most sustainable way to assess a customer farmer requirement for fertiliser, as it effectively replaces what he is expected to remove from the soil in that year and does not rely on low soil test results where P levels may build up over time and reduce the capacity of that land to receive fertiliser.
- The customer list has calculated organic fertiliser allowance for each customer farmer based on the lower of their organic Nitrogen (limit 170kg/Ha) or phosphorous requirements, and thus provides an appropriate basis for assessment. The organic N loading on each customer farmer is taken on an annual basis. This is a cumulative figure of all livestock on the farm. The areas identified for the receipt of organic fertiliser related to farm areas and exclude any unsustainable areas.
- It is set out that the Council agree with the significant environmental improvements both on-site and off-site as a result of the 15% reduction in manure volume, however thereafter it appears that the Council has determined that the impact to be assessed is the remaining 85% rather than the -15% which the applicants set out is inappropriate.
- The applicant contends that the baseline against which the proposed development has been assessed i.e. current authorised activity including the currently authorised organic fertiliser volume is the appropriate barometer against which the proposed development should be assessed.
- The current situation/decision is regressive as it will prevent investment in the existing farm; the provision of new buildings and manure storage structures; the 15% reduction in proposed manure volume; the applicant from making the investments necessary to improve the animal welfare, environmental and economic performance of the farm.
- The applicant feels that when one considers the proposed development in the context of the authorised uses of the site; the overall objective of the proposal; the positive impact that the proposal

will have compared to permission not being granted; and that the applicant has demonstrated that the organic fertiliser already produced on the farm is being/will be managed in an environmentally friendly and sustainable manner and in line with S.I. 31 of 2014 (European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014, that the existing/proposed development is supporting fertiliser substitution rather than adding to it. Therefore, the information submitted is appropriate and provides a reliable basis upon which to determine the application.

- It is concluded that proposed development would provide for improved welfare and environmental standards efficiency and economic viability on an existing agricultural farmyard in a rural area where such use is predominant, traditional and appropriate.
- The proposal would not give rise to an undue risk of water pollution nor would it threaten road safety.
- With regard to land-spreading it is set out that there is in effect no spreading associated with the proposed development, as there is a proposed reduction in authorised slurry volume.

7.0 RESPONSES

7.1 Planning Authority

A response was received from the Planning Authority on 8th December 2015 re-iterating points in the planning report. The main points are summarised as follows:

- The Planning Authority acknowledges the reduction in number of pigs on the overall farm complex but has to consider environmental impact.
- The applicant has not submitted precise location of the spread lands, names and consent of landowners, details relating to groundwater and surface water bodies in the vicinity of the spread lands.
- It is noted that the spread lands are likely to be located in close proximity to the River Barrow and Nore cSAC or water bodies. The absence of such information means the Planning Authority cannot determine if there will be specific impacts, both ecologically and environmentally upon new lands which may not have been used previously as spread lands.
- It is requested that the Board uphold the decision of the Planning Authority to refuse development.

7.2 First Party response to Planning Authority submission

- It is submitted that the Planning Authority's assessment relates to an assessment of the management of the existing manure produced on-site, rather than an assessment of the potential impact of the proposed

development, which would not have required any such information as it would be an assessment of negative value (i.e. a 15% reduction in organic fertiliser).

- The reduced manure volume will mean that there will be 15% less manure to be allocated to customer farmers and therefore any impact could be deemed to be neutral or could be deemed to be -15% in line with the reduction in organic fertiliser.
- The applicants are currently producing an organic fertiliser which is sold/transacted with a number of customer farmers in the area who decide to utilise this source of fertiliser in preference to chemical fertiliser and/or other sources of organic fertiliser that may be available, a practice that has operated since this farm was first established.
- The applicant is solely providing a source of fertiliser to the customer farmers and therefore the applicant neither requires, nor has sought, consent from any landowner.
- In relation to location of customer farmlands, these maps have been provided to the applicant by the customer farmers, and used to generate the maps as submitted in Appendix 6 of the application.
- The current customer farmers have been shown to identify that there is capacity in the area within the limitation of S.I. 31 of 2014 to utilise the organic fertiliser to be produced on this farm in a sustainable manner.
- Details of all organic fertiliser transferred from the pig farm to the customer farmers are recorded and submitted to the Department of Agriculture, on an annual basis. The list with a capacity of in excess of 150% of estimated production is not exhaustive and any other farm who has a fertiliser requirement under S.I. 31 of 2014 may be supplied with fertiliser from this farm hence why maps are generic.
- It is submitted that the applicant has far exceeded the level of information required by providing sufficient information not alone the potential impact of the proposed development but also demonstrating that the remaining activities and the remaining organic fertiliser produced on the farm can be managed in a sustainable and appropriate manner and in accordance with the current regulations application to this practice.
- It is submitted that the names and consent of landowners is not really an issue as applicant is only making a source of organic fertiliser available to customer farmers.
- The applicant considers that cumulative impact has been correctly addressed as part of the application. A potential impact of the proposed development (at customer farmer level) is that the 15% organic fertiliser that will not be available will have to be replaced by chemical fertiliser or another fertiliser source to maintain existing fertility levels.

- With regard to the European Court case it is submitted that the information submitted more than adequately addresses the scientific concerns in respect of AA.
- The existing development supports fertiliser substitution rather than nutrient addition. The proposed land spreading is non-existent as there will be a reduced level of organic fertiliser relative to the existing authorised and permitted scale of the farm i.e. the baseline.

8.0 PLANNING HISTORY

The planning history pertaining to the appeal site is as follows:

File Ref. No. 12/102 Permission granted to construct a new loose dry sow house and conversion of existing dry sow house to loose sow housing with associated site works. No EIS was submitted with this application as it was submitted that the proposal was solely to comply with impending animal welfare legislation.

Corbally site

File Ref. No. 98/610 Permission granted to retain 12 no. fattening houses and 1 no. over ground slurry tank, demolish 2 no. fattening houses, erect 2 no. fattening houses at Corbally, retain 1 no. farrowing house, 3 no. dry sow houses, 2 no. 1st stage houses, 2 no. 2nd stage houses and 1 no. 3rd stage house and 1 no. over ground storage tank.

File Ref. No. 02/350 Permission granted to construct a 2,000,000 gallon covered lagoon with associated site works to store slurry on existing pig farm to comply with Integrated Pollution Control Licence No. M560

9.0 PLANNING POLICY

The Laois County Development Plan 2011-2017 is the relevant statutory plan.

Section 7.12 deals with agriculture

It is the policy of the Council to

EC 7 / P34 Support the expansion and diversification of the agricultural sector into areas such as forestry, alternative energy enterprises, tourism amenities, etc. and ensure that any plan or project associated with the economic development of lands which has the potential to significantly affect a Natura 2000 site is appropriately assessed in accordance with Article 6 of the Habitats Directive in order to avoid adverse impacts on the integrity of the site;

EC 7 / P35 Support Commercial development associated with agriculture, such as the processing of agricultural commodities for food, drinks and other value-added products and the sale of commodities and value-added produce from the farm subject to environmental, traffic and general Planning considerations;

EC 7 / P36 Support the establishment of enterprises associated with the provision of allotments outside the development envelop the urban population of Laois for cultivation

EC 7 / P37 Support the agri-food industry to promote local food production

EC 7 / P38 Support entrepreneurship in alternative energy generation.

Section 12.5 deals with water quality

It is the policy of the Council to

ENV 12 / P01 Consult as necessary with other competent authorities with responsibility for environmental management;

ENV 12 / P02 Comply with the provisions of the Water Framework Directive 2000;

ENV 12 / P03 Implement the measures of the South East and Shannon River Basin Management Plans relating to water quality in County Laois;

ENV 12 / P04 Protect groundwater sources by way of aquifer protection zones;

ENV 12 / P05 Encourage the employment of catchment-sensitive farming practices, in order to meet Water Framework Directive targets and comply with the South East River Basin Management Plan 2009-2015. Land-use Planning of agricultural development is an important element of catchment sensitive farming.

ENV 12 / P06 Implement the EPA Code of Practice for Wastewater Treatment Systems serving Single Houses (2009) in order to protect water quality.

ENV 12 / P07 Ensure that developments that may adversely affect water quality will not proceed unless mitigations measures are employed, such as settlements ponds, interceptors etc.

ENV 12 / P08 Provide Environmental Awareness programs raising awareness regarding the management of Environmental Resources.

Section 13.2.7 With regard to designated areas it is the policy of the Council to

NH 13 / P09 Restrict developments that would be likely, either individually or in combination with other developments, Plans or projects to give rise to significant adverse effects on Natura 2000 sites, and any additional sites that may be proposed for designation during the period of this plan having regard to the sites' conservation objectives NH 13 / P10 Protect areas of national nature conservation importance (NHA) from developments that would adversely affect the special interest;

NH 13 / P11 Recognise and protect the significant geological value of sites in County Laois and safeguard these sites, in consultation with the Geological Survey of Ireland and in accordance with the National Heritage Plan and “Geological Heritage Guidelines for the Extractive Industry”;

NH 13 / P12 Maximise the amenity and tourist potential of key natural heritage assets and amenity areas in a sustainable manner.

Control standard 53 of the CDP which was cited in the reason for refusal is as follows:

In compliance with E.U. Directives, Environmental Impact Statements (E.I.S.) are required for projects which are likely to have significant effects on the environment. EIS’s are obligatory for certain major developments and may be required for a wide range of other developments. The E.U. (E.I.A.) Regulations, 1989-99, specify the types of development and threshold levels for which E.I.S’s are required. The purpose of E.I.A. is to ensure that the environmental effects of a development are properly considered along with, for example, the social and economic aspects of development. An Integrated Pollution Control Licence (IPCL) may also be required.

The Planning and Development Act 2000 and Regulations 2001 define the developments which are subject to an EIA and may require an EIS. The Planning Authority also have the discretion under Planning & Development Regulations 2001 in circumstances where other developments would in its opinion be likely to have significant effects on the environment, to request an applicant to submit an E.I.S. with a Planning application.

10.0 ASSESSMENT

I have read the contents of the file including the EIS and NIS and have visited the site. I consider that the pertinent planning issues in determining this appeal are as follows:

- Extent of proposed development
- Water quality and land spreading
- EIA assessment
- Appropriate Assessment

10.1 Extent of proposed development

In the interests of comprehensiveness it is considered important that the context in which the applicant is proposing to construct the proposed developments is set out. The proposal, in conjunction with the other appeal pertaining to PL.245605, is to achieve efficiencies from all of the investments on-site in order to ensure the future viability and competitiveness of the farm. The purpose of the structure at this site is to provide required housing, manure storage facilities and ancillary structures for c. 1,100 sows (integrated pig production) in a breeding unit rearing pigs to 35-40kg together with all

associated breeding stock. This represent an increase in sow number from 756 integrated. It is set out that the finishing farm (Corbally site) is already of sufficient extent to accommodate all of the pigs produced in the enlarged sow herd. Details submitted indicate that the increase in sow numbers will eliminate the need for additional weaners (up to 2,800) to be brought into the Corbally site from a third (outside) farm thereby increasing the bio-security of this. The information in the EIS sets out that the output from the proposal will not exceed current output.

The piggery activity is a licensable activity under the IED Directive. A copy of the licence (granted in 2000) has been obtained from the EPA website and is attached as an Appendix for ease of reference. Correspondence issued to the applicant that the licence needed to be reviewed as per the Industrial Emissions Directive. A copy of 2014 environmental report submitted to the EPA by the applicant is also available and enclosed for reference.

10.2 Water quality

One of the reasons for refusal pertains to land spreading and lack of detail regarding the recipient farms. The threat to water quality is an important consideration for any agricultural development. In this regard, I propose to examine the issue of land spreading and then examine surface water discharge.

10.2.1 Land spreading

The applicant has set out in the grounds of appeal that there is a requirement for the applicant and any farmers who are in receipt of the manure/fertiliser from the piggery to fully comply with the requirements set out in S.I. 31 of 2014 (European Union Good Agricultural Practice for the Protection of Waters) Regulations 2014. The Regulations, as the Board will be aware, are very prescriptive with regard to farmyard management capacity storage requirements and facilities for pig manure and nutrient management in terms of spreading of slurry on farmlands. The applicant and recipient farmers are required to comply with these Regulations which are considered to constitute good agricultural practice. The grounds of appeal make reference to a previous Inspector's report in respect of this issue in PL. 240879 (a poultry house) where it was stated that it is not normally useful or appropriate for a planning decision to attempt to regulate matters for which a separate specific regulatory regime has been established by statute. This view was also shared in the Inspector's report PL.244342 for construction of new pig houses in Ballyjamesduff, Co. Cavan. I, too, would also agree with these views as planning permission is not required for land spreading. The proposed development appears to have adequate storage capacity for the number of animals on the farm. The details in the EIS set out that the organic manure production based on the approved production system i.e. 756 sows integrated plus approx. 2,800 additional

finishers gives rise to approx. 26,773m³ per annum which accords with the current EPA licence for the farm. It is submitted that the manure output for the proposed development calculated in line with S.I. 31 of 2014 is approx. 22,765.5m³ per annum. The reduction in manure volume is accounted for by the improvements in the feeding system, efficiencies on the farm and minimising rain water ingress. The applicant has indicated that on completion of the proposed development there would be manure storage capacity for 12 months production, well above the 6 month storage capacity required by the Regulations.

10.2.2 Surface Water

The farm currently operates under EPA licence. All clean/uncontaminated surface water from the farm will discharge through one or more storm water discharge points. I note details submitted in the Addendum EIS which sets out inspections and works that were carried out to existing pig houses and tanks so as to minimise leakage. The mitigation measures provided include storm water monitoring on both sites to be carried out on a quarterly basis.

Section 6.3 of the EIS makes reference to sample results. The Inland Fisheries set out that the majority of locations failed to comply with the standards prescribed under the European Communities Environmental Objectives (Surface Waters) Regulations 2009. The submission states that it has to be concluded that the unit is being operated in such manner as to have resulted in serious pollution of the receiving surface water environment. I would draw the Board's attention to the NIS where it is set out that *"compliance of this storm water discharge (prior to attenuation with existing surface waters) with the standards prescribed within the Surface Water Regulations 2009 (S.I. no. 272 of 2009) will be hard to achieve as the concentration of nutrients within the discharge will be dependent on the rainwater dilution factor"*. The applicant indicates that it is more fitting to follow the EPA's guidance on the trigger values for storm water discharge. As the Board will be aware compliance with the Surface Water Regulations is mandatory. Notwithstanding this, an examination of the licence details and environmental report submitted by the applicant to the EPA indicates that no enforcement action appears to have been taken against the applicant. A review of the site history indicates that the piggery has been operational for some time with an IPC licence granted in 2000.

With regard to the proposal in this application, the applicant is seeking to improve efficiencies on the farm through animal performance and welfare, increase the bio-security through the elimination of the importation of pigs from another farm to the Corbally site, and improve farm management practices. The proposal will not result in any net increase in animal numbers on the farm (both sites combined) and as already set out there will be a net reduction in manure produced. The plans submitted indicate a separation of contaminated and

uncontaminated waters. I, therefore conclude that the proposal is not likely to have any further adverse effects on the quality of surface or ground waters over and above the current situation. The applicant would appear to be trying to make efforts to improve the facilities within the Corbally and Graigueafulla sites to reduce the risk of contaminated surface water run-off being discharged.

10.3 Environmental Impact Assessment

The applicant sets out that the proposed development is above the threshold as detailed in Schedule 5, Part 2 of the Planning and Development Regulations 2001 and has submitted an EIS which I consider generally complies with the requirements of Article 94 and 111 of the Planning and Development Regulations 2001 in that it contains the information specified in Schedule 6 of the Regulations. There is an adequate summary of the EIS in non-technical language.

With regard to EIA, I have identified, described and assessed the direct and indirect effects of the proposal under the following headings:-

- (a) Human beings, flora and fauna,
- (b) Soil, water, air, climate and the landscape,
- (c) Material assets and the cultural heritage and
- (d) The interaction between the factors mentioned in paragraphs (a), (b) and (c)

10.3.1 Human beings, flora and fauna

The likely significant direct and indirect effects that may arise from the proposal are the potential for increase in malodour, traffic, noise emissions and a risk of ground/surface water pollution. Visual impact will be minimal given that the proposal is for the new structures to be located within existing farm complex.

The EIS identifies that there are no third party dwellings located within approx. 180m of the Graiguefulla site and/or 300m of the Corbally site. There will inevitably be a temporary increase in traffic to and from the sites associated with the construction period. The increase in breeding herd numbers will give rise to additional traffic between the two sites (i.e. transportation of herd between sites) which in turn will be off-set by the elimination of the stock arriving currently from a third farm to the Corbally site. The EIS identifies that the traffic movements associated with the organic fertiliser has been reduced significantly through the use of larger trucks. The effects on local road network will remain similar to the current permitted situation. Therefore, on balance it is considered that direct and indirect effects arising from traffic movements on human and flora and fauna will be imperceptible. Effects on flora and fauna are assessed in further detail under appropriate assessment section of this report.

The main sources of noise from the development are from the animals on site, the use of machinery on site including operation of ventilation and feeding units, and traffic. The EIS contains noise monitoring results from farms in Cavan. There is no explanation as to the relevance of the results to this appeal site. In any event, the noise levels within both sites were noted as being imperceptible at time of inspection. All pigs are kept indoors within a very controlled environment. There will inevitably be an increase in noise from the animals and associated temporary traffic however I do not consider such would have a significant adverse effect on the environment, flora and fauna or existing residential amenities. The applicant has indicated environmental noise resulting from activities at the site should not exceed 55dB $L_{Ar, T}$ (30 mins) during daytime (07.00 to 19.00hrs), 50dB L_{Ar} (30 mins) during evening time (19.00 to 23.00 hrs) and 45dB $L_{Ar, T}$ (30mins) during night time (23.00 to 0700 hrs). The applicant will be required to comply with the licence condition in respect of noise emissions.

With regard to malodour, there is potential for an increase in same arising from the increased numbers on the breeding site at Graiguefulla. However the EIS sets out that due to the implementation of low protein diets there will be a reduction in odour emissions in the order of 25-30%. The overall development also provides for the implementation of improved management practices through improved housing, ventilation etc., thereby mitigating any potential for existing levels of malodour. The addendum to the EIS submitted as part of further information request considers the malodours arising from manure spreading and transportation movements. I submit the malodours that may arise are not such that would have a likely significant adverse effect on the environment, flora and fauna or local residential amenity. There should be no increase in malodours over and above the current situation.

10.3.2 Soil, water, air, climate and the landscape

The main likely significant effects arising from the proposal under this heading are risk of groundwater/surface water pollution, effects on soil via land spreading and climate change through volatilisation of ammonia. The issue of land spreading and water quality has been dealt with in this report. With regard to climate change farmers will allocate fertiliser in accordance with provisions of European Communities (Good Agricultural Practice for the Protection of Waters) Regulations S.I. 31 of 2014 which is considered to represent good agricultural practice. Whilst I accept that there is a risk of contamination to soil and groundwater, the mitigation measures contained in the environmental report are such that will reduce any likely significant direct effects through the improvement in current farm practice.

10.3.3 Material assets and the cultural heritage

The appeal sites are located in an area Landscape character Area Type 2: Lowland Agricultural Areas where the land use is comprised primarily of pastoral and tillage agriculture. There are no protected views in the immediate area of the sites. Nor is the site located on or in close proximity to any historical monuments or protected structures. The EIS considers the impact of the proposal on tourism particularly in light of the proximity of the Slieve Bloom Mountains. I would concur with the applicant in that once manure spreading activities are carried out in accordance with the Codes of Good Practice and S.I. 31 of 2014 there is not likely to be any significant environmental impact on material assets or the cultural heritage. The issue of malodour has been discussed. The EIS identifies that the activity of land spreading needs to be carefully controlled and properly carried out under relevant statutes. This will be the responsibility of the recipient farmers.

10.3.4 The interaction between the factors mentioned in paragraphs (a), (b) and (c)

I have considered the interaction between the factors mentioned above and am satisfied that based on the information submitted by the applicant including the mitigation measures put forward specifically in relation to discharge to ground and surface waters and subject to recipient farmers complying with all relevant statutes that the proposal is not likely to have a significant effect on the environment.

10.4 Appropriate Assessment

10.4.1 Introduction

One of the reasons for refusal cited that the Planning Authority was not satisfied on the basis of appropriate assessment carried out that adequate or appropriate consideration has been given to the effects of the development on the integrity of SACs in the vicinity of the spread lands. The Board should note that a Natura Impact Statement (NIS) was submitted with the application following a request for FI from the planning authority. Section 3.3 of the report identifies the Natura 2000 sites that are located within a 10km radius of the site. The report sets out that there will be no habitat loss, land take or fragmentation of habitats within any designated area. The report considered that with the exception of the River Barrow and River Nore SAC that the remainder of the sites identified in Section 3.3 can be excluded. Section 4.3 deals with the identification and assessment of potential impacts with Section 5 setting out mitigation measures.

10.4.2 Stage 1 – Screening

With regard to the provisions of Article 6 of the Habitats Directive it is first necessary to consider

“Is the project likely to have a significant effect, either individually or in combination with other plans and project, on the European site(s) in view of the site’s conservation objectives”

There are a number of European Sites located within a 15 kilometre range of the proposed project. Site synopsis and conservation objectives for each of these European Sites are available on the NPWS website and the most relevant one, River Barrow and River Nore SAC has been enclosed as an Appendix for the Board for ease of reference.

Natura 2000 Code	Site	Distance from site
004160	Slieve Bloom Mountains SPA	1.4km south
00412	Slieve Bloom Mountains SAC	1.6km south
002162	River Nore and River Barrow SAC	1.1km east
000859	Clonaslee Esker and Derry Bog SAC	4.9km west
000571	Charleville Wood SAC	9.7 km north-west

The likely significant effects both direct and indirect arising from the proposed development within the context of the site’s conservation objectives is pollution of ground and surface waters. The risk of pollution may arise through the discharge of unclean/polluted water to nearby streams/ditches that feed into the River Barrow and Nore.

Having regard to the source-pathway-receptor model, it is possible to screen out the possibility of likely significant effects occurring to all of these sites save for the River Nore and River Barrow SAC. The River Nore/Barrow SAC is located 1.4km (as the crow flies) to the east of the nearest point of the development site. Having regard to the source-pathway-receptor model it is considered that there is a hydrological link from the site to this Natura 2000 site via ground/surface water discharge which is within the Glashagh waterbody, described as a tributary of the River Barrow. Given the habitats and species listed for protection, the impact of the proposal on this site warrant further consideration.

The NIS submitted identified that the potential impacts from the proposed development on the site included:

- Deterioration of water quality in designated areas resulting from pollution from surface water run-off during site preparation and construction;
- Deterioration in water quality from surface water run-off post construction;

- Deterioration in water quality from pollution/eutrophication caused by land-spreading of the manure produced at the site;
- Risk to Annex I habitats or Annex II species associated with the site
- Cumulative impacts.

10.4.3 Considerations of significant effects on River Nore and River Barrow (Site Code 002162)

The primary likely significant effect within the context of the River Barrow Nore SAC conservation objectives is the risk of pollution to local watercourses during construction and also the discharge of polluted water via ground/surface water post construction that may affect the maintenance of favourable conservation conditions of particular species. As identified in the NIS, the contamination of water and any increase in siltation levels could have a toxic effect on the ecology of water-courses, directly affecting certain species where there is an objective to restore their conservation condition and their food supplies. The applicant has indicated that in recent times measures have been implemented in order to ensure that surface water discharge from this farm does not have an adverse effect on the local aquatic environment. The NIS identifies that the River Barrow has been assigned a Q4-5 status at a point upstream of the Rathcoffey area (at Ford South of Rearyvalley) which is approximately 700m of Rearymore, where the drains/streams from the proposed development possibly enter the Barrow system. The NIS identifies that the River Barrow in the Tinnahinch Bridge has also been assigned a Q4-5 status and the NIS submits that the farms at Corbally and Grigueafulla are not having a discernible impact upon water quality within the Barrow system. Reference is made to the EPA Inspector's report and that it is anticipated that further improvements to all storm water discharge points will occur with the installation of silt traps along storm water discharge lines.

The key issue is whether the proposed development either alone or in combination with permitted level of development is such that would be likely to adversely affect the integrity of a Natura 2000 site in view of its conservation objectives. The planning authority was particularly concerned with the issue of land-spreading. The applicant has provided details in the EIS of farms which would be accepting the resultant manure/organic fertiliser. It is submitted that records for the distribution of and movement of all manure produced will be kept on site. With regard to the issue of land-spreading permission is not required for such activity and as such it is considered particularly onerous for the applicant in this instance to have to demonstrate the exact location where third parties would intend spreading. I consider that the recipients of the slurry would have an obligation to comply with statutory regulations outside the remit

of planning legislation that deal with such matters such as the Good Agricultural Practice for the Protection of Waters, Regulations 2014. There are no other existing or proposed projects in the immediate vicinity that would give rise to in-combination effects within the context of the site's conservation objectives.

With regard to discharge of surface water, the plans indicate the separation of soiled and clean water. The NIS identifies *that "compliance of this storm water discharge (prior to its attenuation with existing surface waters) with the standards prescribed within the Surface Water Regulations 2009 (S.I. No. 272 of 2009) will be hard to achieve as the concentration of nutrients within the discharge will be dependent on the rainwater dilution factor"*.¹ The applicant has indicated that the applicant will follow the guidance on trigger values for storm water discharges as outlined in the EPA in their publication on trigger values for licensees.

The Board should also note that due consideration has been given to conservation objectives in respect of the pearl mussel. The appeal sites are located outside the 10km catchment identified in the Nore Sub-basin Plan.

As already stated in this report, the piggery is currently operational and whilst there will be an increase in sow numbers, there will no longer be a need for the importation of 2,800 weaners from an outside farm. The actual number of pigs will not exceed current levels. The applicant is also indicating that manure production will be reduced and the plans provide for the provision of modern structures with the clear separation of clean and soiled waters.

10.4.4 Interconnectivity between priority habitats and protected species

The Board should note that due regard has also been given to the role that the River Nore and River Barrow SAC and other priority habitats play in supporting and sustaining bird species and in particular those listed as special conservation interests for the Slieve Bloom Mountains SPA. It is considered that the proposal will not adversely affect the integrity of the Slieve Bloom Mountains SPA in view of the site's conservation objectives or impact on bird species afforded protection under either the Habitats Directive or the Wildlife Acts.

10.4.5 AA determination – Conclusion

Having regard to the Natura Impact Statement and further information submitted to the Planning Authority I consider that the proposed development would not result in the loss of any Annex I habitat or any Annex II species. The proposed drainage arrangement would not give rise to any likely

¹ P18, NIS

significant effects on the River Barrow and River Nore SAC in the context of its conservation objectives. It is therefore concluded that subject to the carrying out of the proposed mitigation measures contained in the Environmental report, there would be no adverse impact on the integrity of the River Barrow or River Nore SAC either alone or in combination with other plans or projects in view of the site's conservation objectives.

11.0 CONCLUSION

It is considered that the proposed development is such that complements the existing permitted land use and will provide a more integrated farm complex reducing the need for transportation of pigs from an outside farm to the current appeal site. The proposal will not have an undue negative visual impact on the landscape and subject to compliance with the mitigation measures provided in the environmental report will not result in likely significant effects on the environment. No planning permission is required for land spreading and the recipient farmers will have to comply with good agricultural practices as provided for under statute. It is also considered that the proposed developments on both the Graiguefulla and Corbally site either alone or in combination will not compromise the integrity of any Natura 2000 site in view of its conservation objectives. The proposal is therefore considered to generally accord with the proper planning and sustainable development of the area.

12.0 RECOMMENDATION

I recommend a grant of permission subject to conditions set out hereunder.

REASONS AND CONSIDERATIONS

Having regard to the nature of the proposed development in a rural location along with the provisions of the Laois County Development Plan, it is considered that the proposal, subject to compliance with the conditions set out hereunder, would not be seriously injurious to the existing residential amenities of the area or property in the immediate vicinity, would be acceptable in terms of traffic safety and convenience, would not give rise to an undue risk of water pollution and would not be prejudicial to public health and would otherwise be in accordance with the proper planning and sustainable development of the area.

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 22nd July 2015 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. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard-
 - (a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and
 - (b) all soiled waters shall be directed to a storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

Reason: In the interest of environmental protection and public health.

3. The slatted sheds shall be used only in strict accordance with a management schedule to 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, 2014 (SI No.31 of 2014), and shall provide at least for the following:
 - (1) Details of the number and types of animals to be housed.
 - (2) The arrangements for the collection, storage and disposal of slurry.
 - (3) 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.

4. All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the proposed and existing storage facilities and no effluent or slurry 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.

5. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.

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

6. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2014 (SI No. 31 of 2014).

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

7. The external blockwork on the pig houses shall be properly rendered and painted in good quality of suitable paint and details of the colour of all external finishes shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

8. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. This plan shall be prepared in accordance with "Best Practice Guidelines on the Preparation of Waste Management Plans for the Construction and Demolition Projects" published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provisions of the Waste Management Plan for the region of which the site is situated.

Reason: In the interest of sustainable waste management

9. 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. 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Joanna Kelly

Inspectorate

12th February 2016