

An Bord Pleanála



Inspector's Report

PL17.245707

DEVELOPMENT:- Retention of use of two Agricultural storage sheds for storage of sludge/biosolids.

Location: Fyanstown, Kells, County Meath.

PLANNING APPLICATION

Planning Authority: Meath County Council
Planning Authority Reg. No: KA150093
Applicant: Eugene Reilly
Application Type: Retention of Permission
Planning Authority Decision: Grant

APPEAL

Appellant: Fyanstown Community Group
Types of Appeal: 3rd Party -v- Grant
Observers: None
DATE OF SITE INSPECTION: 18th January, 2016.

INSPECTOR: Paul Caprani

1.0 INTRODUCTION

PL17.245707 concerns a third party appeal against the decision of Meath County Council to issue notification to grant planning permission for the retention of use of two agricultural storage sheds for the storage of sludge/biosolids in the townland of Fyanstown approximately 5 kilometres to the east of the village of Kells. The grounds of appeal argue that the sheds are totally unsuitable to accommodate such waste and the waste will give rise to environmental problems which will adversely impact on the amenity of residents in the vicinity. A number of procedural issues with regard to validating and determining the application are also highlighted in the grounds of appeal.

2.0 SITE LOCATION AND DESCRIPTION.

The appeal site is located in the townland of Fyanstown approximately 5 kilometres to the east of Kells and to the south of the R163, (Kells to Slane Road). The site comprises of a number of farm buildings which are set back from the R163 a dedicated access road approximately 250 metres in length links the subject site with the R163. The R163 is a relatively lightly trafficked road.

With regard to surrounding settlements there are no dwellinghouses in the immediate vicinity of the subject site. The site accommodates a disused dwellinghouse in its north-eastern corner. Other dwellinghouses and farm buildings are located on the north side of the R163 in the immediate vicinity of the site.

The Moynalty River runs in a north-south direction approximately 100 metres east of the site. This river is a tributary of the Blackwater River, a designated Natura 2000 site. The confluence point between the Moynalty River and the Blackwater River is approximately 1.5km to the south of the site.

The nearest residence to the site is approximately 230 metres to the north-east on the south side of the R163 adjacent to the banks of the Moynalty River. The lands surrounding the site are in agricultural use.

The site itself accommodates a disused house and two large sheds facing onto a central concrete hardstanding yard. A smaller disused shed to the immediate east of the north shed is also located on site. These sheds comprise of former agricultural sheds with open sides.

There appears to be side-bars in place to facilitate retaining walls. The north shed incorporates a concrete floor and has a gross floor area of 493 square metres. Some of the side elevations of the shed incorporate retaining walls with a minimum height of 2.4 metres.

The south shed comprises of five separate bays together with a liquid collection point on the eastern side of the shed. The south shed has a gross floor area of 854 square metres. The liquid collection point is an open area with a cubic capacity of approximately 870 cubic metres. The collection area has a depth of approximately 3 metres below ground level. Removable retaining panels are located on the southern elevation of the north shed and on each of the bays on the northern elevation of the south shed. The removable retaining panels face onto a concrete hardstanding area which incorporates a run-off collection point which is located in the south-eastern corner of the concrete yard and feeds into the adjacent liquid collection point. Roof rainwater from the sheds run into separate soakpits located outside the site boundary.

3.0 PROPOSED DEVELOPMENT

Retention of Planning Permission is sought for the use of the two agricultural storage sheds (north shed and south shed) for the storage of sludge and biosolids.

4.0 PLANNING AUTHORITY'S DECISION

4.1 Documentation Submitted

A planning application form and drawings were submitted on the 3rd February, 2015. It appears from the information contained on file that an application was originally lodged with Meath County Council in 2014. However on foot of additional information request it appears that a revised application was submitted on 3rd February, 2015.

A report in respect of the previous application (dated August, 2014) was submitted with the latter application. It indicates that the capacity of the shed allows for storage of approximately 3,367 cubic metres of biosolids. It is stated that untreated sludge is delivered to the shed and it will be lime-treated on arrival before being stored in the sheds. The stored sludge will then be spread on the applicant's lands in accordance with a nutrient management plan. It is expected that the shed will store

up to 4,000 tonnes per annum. Sludge will be delivered in an average 20 tonne loads, this equates to an average delivery of less than four loads per week.

In terms of odour control, it is stated that the applicant has not had any odour issues in relation to the storage of sludge/biosolids in the shed over the previous five years. Measures adopted to help reduce odour nuisance are set out.

Attachment 1 includes an appropriate assessment screening report. It notes that the River Blackwater SAC is located approximately 1 kilometre from the site. However there will be no direct/uncontrolled run-off from the landspreading activities into any of the tributaries associated with this SAC. It is therefore considered that the storage of sludge/biosolids will not have any direct or indirect impacts on the above Natura 2000 sites. The screening concludes a finding of 'no significant effects'.

Attachment 2 sets out details of a nutrient management plan. Landspreading details are set out in this plan. It states that the proposal will fully accord with SI 31 (European Communities) (Good Agricultural Practice for the Protection of Water) Regulations 2014 will be complied with.

Attachment 3 contains a groundwater vulnerability report. It notes that the site is located above a poor aquifer (PI) and the farm is not located in a source protection area. The farm is located primarily in an area of high groundwater vulnerability. The landspreading response matrix is "R1" which means that landspreading is acceptable subject to normal good practice.

Attachment 4 sets out a structural integrity report. It states that the survey undertaken was superficial in nature and carried out in the absence of any opening up works. While the report cannot be construed as a guarantee of a soundly constructed building free from flaws and defects, it is considered that the basic structure was generally sound and suitable for the uses proposed.

4.2 Planning Authority's Initial Assessment

A report from An Taisce states that an evaluation is required in relation to leachate risk, odour management and traffic impact at this location.

A number of letters of objection have been submitted the contents which have been read and noted.

A report from a Senior Executive Engineer states that although adjacent to the River Moynalty, the proposed development is not located in either Flood Risk Zones A or B as per the OPW CFRAM maps and therefore no flood risk assessment is required.

A report from the Council Heritage Officer states that the Council are satisfied that the proposal will not adversely affect the integrity of any Natura 2000 sites. It is also noted that the nutrient management plan submitted (Plot G) are known feeding grounds for Whooper Swans. Whooper Swans are listed under Annex I of the Birds Directive. Therefore an ecological impact assessment of the proposed development of flora and fauna of the site and the spreadlands should be undertaken by a suitably qualified individual.

A report from the Roads Design Office states that there is no objection to the proposal as the entrance is wide and traffic volumes are low.

4.3 Request for Additional Information

The planner's report sets out the proposed development and notes the various submissions made in respect of the application.

The report goes on to recommend that the following additional information should be submitted by the applicant.

- An ecological impact assessment which would specifically include an assessment of the Whooper Swan usage of the proposed spreadlands.
- Further details in relation to any treatment to be carried out onsite and submitting proposals how they will ensure that any such treatment process will not give rise or cause pollution. Further details demonstrating that the structure is capable of containing the potential leachate from sludge storage and the treatment processes involved.
- Details regarding the maximum storage capacity at the facility, clearly demonstrating the structure's ability to store biosolids during periods when landspreading activities are prohibited.

- Details of the source of sludge and haul routes associated with same.
- Details of the type of HGV vehicles to be used in transporting the sludge.
- A request to respond to issues raised in the third party submissions.

4.3 Further Information Response

Further information was received on 11th September, 2015. The response is briefly set out below.

With regard to the ecological assessment the following is stated. The storage of the sludge/biosolids on the site in question will not have an impact on flora and fauna as the use already exists. In relation to the spreadlands this is not considered part of the development. Reference is made to An Bord Pleanála reference case (09.RL2653 – this file is attached) which considered the application of sewage sludge is not development. As such, an ecological impact assessment of the spreadlands should not be required.

With regard to the processes to be undertaken on site, all sludges transported for the use in agricultural lands are treated by alkaline stabilisation as outlined in the Code of Good Practice for Use of Biosolids in Agriculture. A dedicated liming unit will be used to ensure a homogenous mix is achieved. All run-off is directed to a storage tank. Based on current operational experience the treatment/processes will not give rise to any pollution or nuisance. However in the event that an issue arises procedures will be put in place to mitigate the issue. With regard to the structural integrity of the buildings, reference is made to the visual structural survey undertaken in August, 2014 (Attachment 4 to the original application).

The maximum storage capacity of the sheds is 3,367 cubic metres with an additional storage capacity of 870 cubic metres in the reinforced concrete pit. The stored sludge will then be spread on the applicant's land in accordance with nutrient management plans.

The source of the sludge comes from County Council contracts. Currently sludge is available from Monaghan, Leitrim and Dublin. However these sources will change over time. It should also be noted

that the biosolid/sludge replaces a transport of artificial fertiliser on these lands.

The type of vehicles to be used will be articulated trucks/skip trucks, tractors and trailers. The hours are typically Monday to Friday 0800 hours to 2000 hours and Saturdays 0800 hours to 1300 hours.

Finally the response addresses issues raised in the various third party observations.

4.4 Further Assessment on Planning Authority's Decision

A letter from An Taisce states that the response is inadequate.

A subsequent planner's report was prepared on foot of the additional information submitted. It outlines the various responses received by the applicant and considers that, based on the information submitted, the development is acceptable and therefore recommends that planning permission be granted for the retention of use. In its decision dated 6th October, 2015 Meath County Council, issued notification to grant planning permission for the proposed development subject to 6 conditions.

5.0 PLANNING HISTORY

The Planner's Report notes that there are number of planning applications submitted in respect of the subject site. All applications related to the permission of retention of the use of the subject agricultural storage sheds for the storage of sludge/biosolids. In the case of the four applications submitted, the Planning Authority deemed the applications to be incomplete.

One referral file is also attached. Under PL09.RL2653 a question arose as to whether the application of sewage sludge on a willow crop is or is not exempted development. An Bord Pleanála having particular regard to Sections 2, 3 and 4 of the Planning and Development Act 2000 and Class 15, Part 3 of Schedule 2 of the Planning and Development Regulations, concluded that the application of sewage sludge does not come within the definition of works as defined under the Act and the application of sewage sludge is not a material change of use in the land. As such it was concluded that, as neither works nor a material change

of use of the land was taking place, the activity does not constitute development. This decision was dated April, 2010.

6.0 GROUNDS OF APPEAL

The decision of Meath County Council was subject to a third party appeal by Fyanstown Community Group. The grounds of appeal are outlined below:

- The sheds are not fit for purpose and are in a bad state of disrepair - being 60 to 70 years old.
- The site is located close to a residential population and only 800 metres from a primary school. The development is attracting vermin and birds and giving rise to significant odour problems and noxious smells.
- The applicant has failed to indicate why retention of planning permission is being sought in this instance.
- Meath County Council in supplying sewage to the subject site are being 'a judge in their own case' and this could give rise to apparent bias to a reasonable observer.
- It is argued that the development as submitted to the Planning Authority contravenes many of the statutory requirements set out in the Planning and Development Regulations. In this regard the following is stated:
 - The name of the applicant given in the newspaper notice is different to that set out in the planning application form.
 - The applicant has not stated how long the retention is being sought.
 - The applicant has not indicated that the application requires a IPC licence or waste licence. It is also stated that the sewage sludge will contain fractions of non-organic waste that cannot be used as fertiliser. As such the application relates to waste disposal rather than reuse.
 - The applicant has failed to outline in blue all lands under his ownership.

- The nutrient management plan includes maps at 1:5000 scale which indicates the spread area, but does not indicate the ownership or who controls the land.
- No information on the treatment processes or equipment to be used in the treatment process is provided. No details are provided in respect of the storage of lime on site.
- Some of the WWTP's which generate the sludge for the facility are in breach of the Urban Waste Water Treatment Directive.
- There is no evidence of a written consent for the spread of lands or identification of the owner of the lands in question.
- The site area has been artificially minimised in order to reduce the retention application fee. The applicant has failed to comply with the requirement of indicating a north point on all drawings. No ground levels have been indicated and there is no topographical survey.
- The structural report survey was carried out by a company who will be supplying sewage slurry to the site.
- With regard to the issue of pre-application consultation, the Planning Authority are obliged in accordance with the provisions of 247(5) to keep a copy of the record of the consultations.
- There is a substantial intensification of use of a site in the immediate area of the development where retention is being sought for sewage sludge related development. An adjacent site appears to propose treatment and storage for the entire output for Meath alone amounting to some 15,000 tonnes annually. The cumulative impacts have not been considered by the local authority.
- The application proposes to store, process and treat hazardous waste and the planning notice does not reflect this. No adequate assessment has been made of this hazard by either the applicant or the Planning Authority.
- The grounds of appeal go on to make reference to the Waste Framework Directive (2008/98/EEC) and reference is particularly made to the definition of hazardous waste. One of the criteria for

hazardous waste includes toxic. Sewage sludge must be held to be toxic waste at least prior to treatment and after treatment to some degree depending on the extent of treatment and the chemical composition. It is therefore concluded that the waste being received at this facility is hazardous waste. There is also a requirement under Article 13 of the Directive that member states shall take necessary measures to ensure that waste management is carried out without endangering human health or being harmful to the environment.

6.0 APPEAL RESPONSES

6.1 Applicant's Response to Grounds of Appeal

A submission was received on behalf of the applicant on 4th December, 2015 from Biocore. The response is set out below.

Retention of planning permission is being sought at this facility as the facility has been used for the storage of sludge. No construction or excavation work has taken place on site. The facility has previously stored sludge/biosolids from Meath County Council that was used as a replacement for artificial fertiliser.

Meath County Council are the statutory authority in respect of validating and processing the application and they determined that the application was in compliance with the Planning and Development Regulations.

Reference to other proposals from other parties and other sites are outside the control of this application. The biosolids from the facilities will be used locally as a replacement for artificial fertilisers.

Sewage sludge and biosolids are not hazardous waste. Reference is made to the European Waste catalogue where sludges from the treatment of urban wastewater are deemed non-hazardous.

Reference to the non-compliant wastewater treatment plans are not relevant to the application in question. The fact that discharges from wastewater treatment plants are not compliant with the Urban Wastewater Treatment Directive does not imply that the sewage sludge is non-compliant.

In terms of treatment, it is stated that where sewage sludge is accepted, it would be treated by alkaline stabilisation. The equipment required to complete this process is a specially adapted diet feeder. This is a mobile piece of equipment that may be transported using an agricultural tractor. The addition of lime which raises the pH results in an exothermic reaction releasing heat which causes temperatures to rise about 70°C. This causes the destruction of cell membranes of harmful pathogens and gives effective pasteurisation. The method of treatment satisfies all requirements set out in the protocol for the use of biosolids in agriculture in County Meath. The material spread on land will not have a pH of 12 as the stabilisation process is complete the pH drops.

Any concerns in respect of pH and metal levels in the soil are addressed by soil sampling. pH levels are calculated before any sludge is applied. The aquifer rating and source protection rating give a result of "R1" which means that landspreading is an acceptable subject to normal good practice.

There was no projecting splitting associated with the proposed development and an appropriate assessment screening report was carried out and accepted by Meath County Council.

6.1 Meath County Council's Response to the Grounds of Appeal

The grounds of the third party appeal are set out in the Planning Authority's response and it is stated the Planning Authority is satisfied that all matters outlined in the third party submission were considered in the course of its assessment of the planning application as detailed in the Planning Officer's Report. The Board are therefore requested to uphold the decision of the Planning Authority.

7.0 OBSERVATIONS

An observation was received from Inland Fisheries Ireland. The submission outlines the obligations of Inland Fisheries Ireland which is the statutory body and also outlines the overall goals and objectives associated with the EU Water Framework Directive. In this regard specific reference is made to article 5 of the 2009 Surface Water Regulations. It is noted that the applicant is located adjacent to the Moynalty and Blackwater River (cSAC). Overland flow from this development may discharge to either river. These rivers are currently in poor status and should be restored to at least good status by the end of

2015. They contain stocks of Atlantic Salmon, Brown Trout and Lamprey. The Moynalty River also contains prime salmonid nursery beds.

The IFI objects to the above application for the following reasons.

- The storage facility itself may not be fit for purpose for the storage of sludge. It is noted that the survey comprises of a visual structural survey. Concerns were expressed regarding the feasibility of converting the building from its original purpose to storing and processing sludge and as a result effluent may escape and discharge to local waters causing damage to nearby aquatic habitats.
- The road network may not be fit for large vehicles transporting sludge. It is unclear as to the number of journeys coming and going to the sludge facility per annum. Any one accident may cause damage to the fisheries habitat no matter what precautions are involved.
- Concerns are expressed with regard to the cumulative effects of storing sludge in the vicinity. The neighbouring sludge storage facility at Rossmeen has not been taken into account in the assessment of the planning application. This facility is the subject of a separate planning application.
- Finally it is stated that the appropriate assessment report is inadequate as it is for a sludge storage facility at Kilberry and not Fyanstown. Also it does not assess the cumulative effects of the neighbouring sludge storage facility at Rossmeen.

8.0 FURTHER SUBMISSIONS ON BEHALF OF PARTIES

On foot of a Section 131 notice issued by the Board on the 16th December, 2015, the various parties were requested to submit observations on foot of the various submissions circulated. The information contained therein is briefly summarised below:

8.1 Further Submission from Planning Authority

A report from the Planning Authority states that it has no further comments to make in respect of the appeal.

8.2 Further Submission from Appellant

A submission on behalf of the Fyanstown Community Group states that EU Directive have direct effect regardless to the extent to which they are transposed into Irish primary and secondary legislation.

The proposed development will have a huge impact on the amenity and quality of life for the residents of the area. Reasonable alternatives are available.

It is contended that the applicant has used the site illegally for the storage of biosolids. This precluded the proper consideration of alternative sites. Previous illegal use cannot provide any weight for a grant of planning permission in this instance. Similar applications within Meath operated by the applicant's agents should have been considered as alternative sites. The producer of sewage sludge retains the responsibility for throughout its life cycle. If sewage sludge is not properly treated or if contains effluent from landfills it is entirely inappropriate for application on lands.

The applicant needs to demonstrate that he owns suitable machinery for mixing lime with sewage sludge and further details of the quantity of lime procured should be submitted. Concern is expressed that the spreading of sludge on lands may occur directly without treatment. No evidence is provided that the land is suitable to receive sludge. There are limits to the effectiveness of landspreading in terms of resource recovery as large amounts of methane gas are emitted. Clearly alternative demand is available with the incinerator located at Duleek. The Board are requested to consult studies carried out by Teagasc in relation to slurry spreading and its impact on odour generation and methane emission. Methane emissions have very intensive global warming impacts. The land which is intended to benefit from the spreading have been subject to recent flooding with consequent run-off to water courses. The applicant has not addressed the impact on worms and insects of spreading material and the consequent impact on the food chain.

8.3 Further Submission from Applicant

A further submission by Biocore on behalf of the applicant specifically addresses the issues raised in the submission from Inland Fisheries Ireland. The planning application is to comply with all relevant Regulations and the protocols set out in the Code of Good Practice for

the use of Biosolids and Agriculture. The building will still be used for agricultural purposes. The location of the building satisfies all requirements for buffer zones. Any surface rainwater in the farmyard is drained into an adequately sized collection tank in the yard.

Material is transported by licensed hauliers to the storage sheds. The material is transferred in containers which will minimise odour and risk of spillage. The material is to replace artificial chemical fertilisers which would otherwise be used. The average weekly movement to this facility is four loads per annum.

It is stated that if the other application for the storage of sewage sludge in the vicinity proceeds through the application process, it will have to take the subject facility into consideration also.

Reference in the Appropriate Assessment Screening Report to 'Kilberry' is a typing error and the site location satisfies all requirements for buffer zones for water courses and rivers.

9.0 DEVELOPMENT PLAN PROVISION

The site is governed by the policies and provisions contained in the Meath County Development Plan 2013-2019. The site is not governed by any specific land use zoning objective in the development plan as it is located in an agricultural area. Section 7.17 of the development plan specifically relates to waste management. It states that the waste management policy is predicated on the EU Waste Hierarchy Prevention, preparing for reuse, recycling, energy recovery and sustainable disposal.

In accordance with the requirements of the Waste Management (Framework Directive) Regulations 2011, an evaluation of the current waste management plan was completed in 2012. As a result of this evaluation, a replacement waste management plan will be required. In terms of waste management objectives the following relevant objectives are contained in the Plan.

WMOBJ1 – To facilitate the provision of appropriate waste recovery and disposal facilities in accordance with the principles set out in the appropriate waste management plan applicable from time to time made in accordance with the Waste Management Act 1996.

WMOBJ4 – To update the Sludge Management Plan for County Meath and to seek to implement the recommendations of that Plan.

WMOBJ16 – To support the development of infrastructural requirements necessary to meet the objectives and targets of Meath’s Sludge Management Plan having regard to the relevant siting guidelines.

8.2 Meath County Council’s Protocol for the Use of Biosolids in Agriculture in County Meath

Section 2 of this report relates to treatment and states that sewage sludge before being used in agriculture, must be subject to biological chemical or heat treatment. One of the suitable treatment listed in the document is alkaline stabilisation. Details of the requirements for the application of sludge on agricultural lands are also set out in the document.

Storage facilities intending for the holding of biosolids shall hold a certificate granted by Meath County Council under the Waste Management (Registration of Sewage Sludge Facilities) (Regulations 2010). Untreated sludges, which are imported into County Meath from another county must be treated to biosolids standard within one week of arrival in County Meath. Where a treatment process is provided, the operator/contractor must demonstrate that separate treatment areas and the storage areas for both processes, and these processes must not take place within the same building. Details of storage requirements are set out and the protocols state that storage facilities for biosolids shall not pose a risk to either surface waters or groundwaters or pose a risk to human, animal or plant life.

10.0 PLANNING ASSESSMENT

I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal. I consider the key issues in determining the current application and appeal before the Board are as follows:

- Suitability of Site for the Storage of Sludge and Biosolids
- Biosolids/Sludge Treatment on Site
- Potential Cumulative Impacts
- Procedural Issues
- Other Issues

10.1 Suitability of Site for the Storage of Sludge and Biosolids

Having inspected the site I consider that both the site and the building in question may not be suitable for the storage of sludge and biosolids. I consider the buildings are in a state of disrepair to the extent that they would not be suitable to accommodate waste on the nature proposed which could be harmful to the environment. While the structural report submitted with the planning application suggests that the basic structure of the buildings are generally sound and suitable for purposes proposed, it should be highlighted that the report also states that the survey was superficial in nature and was carried out in the absence of any opening up works. The report notes that “this report cannot be construed to guarantee a soundly constructed building free from flaws and defects other than those that are noted”.

On foot of my site inspection and I refer to the photographs attached, I consider that there are a number of significant defects which could give rise to the conclusion that the buildings and courtyard in question are not fit for purpose for the storage and treatment of biosolids. It is clear from Photo No. 2 attached to this report that the western elevation of the northern shed does not incorporate retaining walls in order to contain sludge. Furthermore there is no evidence that retaining walls are currently in situ in order to contain wastes within the facilities. There is clear evidence of leaching and ponding of effluent within the courtyard area between the buildings.

The drainage characteristics of the hardstanding area appear not to be fit for purpose. Significant ponding of effluent was apparent during my site inspection. Soiled effluent was located throughout the hardstanding area and it appears that the drainage gradients within the hardstanding area are not conducive to the drainage of effluent into the attenuation tank. Although I have not carried out a detailed inspection, it appears that some panels are missing on the upper portion of the shed structures particularly the northern shed structure which may allow water egress through the roof thereby exacerbating the leaching of sludge/biosolids held within the sheds during periods of heavy rainfall. It is imperative that all waste contained on site within the sheds are kept covered so as to reduce potential leachate of waste. Article 7 of S.I. 31 of 2014 (Good Agricultural Practice) for the Protection of Water Regulations (while these relate to agricultural waste as opposed to biosolid/sludge they are nevertheless relevant in my opinion as they highlight the importance of maintaining the structural integrity of buildings in order to minimise environmental pollution), require that

storage facilities “shall be maintained free of structural defect and be maintained and managed in such a manner as is necessary to prevent run-off or seepage directly or indirectly into groundwater or surface water or such substances”.

I would also refer the Board to Photo 9 attached to this report. It clearly shows that there is a large breach/gap in the retaining wall along the eastern boundary of the site. This gap is located in close proximity to the drainage area adjacent to the attenuation tank. There is a back-up of effluent in and around the outlet pipe which has resulted in ponding of effluent in close proximity to the breach in the wall. It was also evident from my site inspection (see Photograph 10) which indicates that ponding of effluent has occurred in the gap in the wall. This clearly indicates that pollution is not contained on site. Soiled run-off/leachate from the existing waste stored on site is apparent in Photographs 7 and 8 attached to this report.

The liquid collection pit adjacent to the southern shed appeared to be full at the time of site inspection and no details are provided on file as to how, and at what intervals, the liquid collection pit is emptied. This collection pit was a source of significant odour during my site inspection and it is possible, and perhaps likely, that over topping of this liquid collection pit/retention tank during periods of heavy rainfall could occur. This also represents a significant environmental threat having particular regard to the close proximity of the Moynalty River which is c.100 metres to the east of the site.

Having inspected the site therefore and having particularly noted the condition of the buildings on site together with the breaches in boundary walls, I can only conclude that the site is not fit for purpose for the use proposed and would therefore represent an unacceptable threat in terms of pollution. A complete retrofitting of the buildings and site boundaries together with a more detailed, robust and comprehensive site management plan would be required in my opinion before the Board could consider granting planning permission/planning retention for the facility in question.

10.2 Biosolids/ Sludge Treatment on Site

I also consider that insufficient information is contained on file in relation to the nature of treatment to be carried out in respect of the waste to be stored on site. The information contained on file indicates that an alkaline stabilisation process is to be undertaken in the treatment

process of the sludge/biosolids. This essentially involves the adding of lime to the sludge in order to increase the pH to 12 which will result in the killing off of pathogens and bacteria within the sludge. It is clear from the various guidelines and protocols including the specific '*Protocol for the use of Biosolids in Agriculture*' adopted by Meath County Council, that the treatment of sludges/biosolids is a necessary pre-requisite prior to any landspreading. Alkaline stabilisation is a very effective process in the treatment of sludges and biosolids and is widely used in Ireland and internationally. The applicant indicates in his response to the grounds of appeal that the alkaline stabilisation process will involve increase in the temperature of the sludge to 70°C in order to effectively kill off pathogens and bacterias. In the alkaline stabilisation process, the temperature achieved in the sludge is directly proportionate to the volume of lime applied. This would imply that in the treatment of 4,000 tonnes of sludge per annum, significant volumes of lime would be required in order to treat such waste effectively. It is likely therefore that the applicant will be required to import and store quantities of lime on site on a permanent/semi-permanent basis. The protocol for the use of biosolids in agriculture requires the treatment of sludge to take place on a weekly basis and that any lime involved in the alkaline stabilisation process is stored separately from the waste within the site. The applicant indicates that c.4 deliveries of waste will be accepted on site on a weekly basis. Having regard to the frequency of delivery together with the necessity to treat the waste on a weekly basis, it may not suffice to bring mobile plant on-site in order to carry out the treatment process as suggested in the grounds of appeal.

I would consider at the very least that the Board would request further information in relation to the proposed treatment process and further details how the applicant proposes to treat the sludge on site without storing lime on site on a permanent/semi-permanent basis. Based on the information available, together with the requirements for the lime stabilisation process I am not satisfied that the treatment process can be undertaken in an effective manner under the proposed application. If the Board are minded to grant planning permission for the proposed development, I would recommend that prior to determining the application further details are submitted regarding the mixing and agitation of sludge and lime within the facility to ensure the effective treatment prior to any landspreading processes. Finally in relation to this issue the Board will be aware that lime with its characteristic high pH can in itself cause considerable environmental damage if it is not stored and handled properly within the facility. It is imperative therefore that

further information in this regard is obtained prior to the consideration of granting permission for the proposed facility.

8.3 Cumulative Impacts

I would also consider it appropriate that if the Board are minded to grant planning permission for the proposed development, that a more robust detailed and comprehensive analysis is carried out in respect of cumulative impact arising from the proposed development. I base this view on the grounds that a similar application is currently being considered by Meath County Council under Reg. Ref. KA15/1441. Under this application (which was received by the Planning Authority on 23rd October, 2015) planning permission and retention of planning permission is sought for a similar type of facility involving a 664 square metre extension to an existing agricultural shed for the storage of sludge/biosolid fertiliser together with the construction of an overground slurry/industrial sludge storage tank with a capacity of 931 cubic metres. Permission is also sought to increase the overall tonnage of sludge/biosolid fertiliser to be accepted at the facility from 3,000 tonnes to 15,000 tonnes per annum. This site is located in the townland of Rossmeen on the northern side of the R163 approximately 750 metres to the north of the subject site. A decision on this application is held in abeyance until the applicant submits additional information requested by the Planning Authority on 15th December, 2015. Further information is requested in respect of:

- Whether or not an EIA is required.
- A more comprehensive assessment in terms of the potential impact on Natura 2000 sites.
- Further details in relation to flood risk assessment.
- Further information in respect of traffic.

In his response to the third party grounds of appeal the applicant merely states in respect to the issue of cumulative impacts that *“as Paddy Brady’s agricultural application proceeds (KA15/1141) through the application process it will have to take Eugene Reilly’s facility into consideration”*.

It is respectfully suggested that such a response in no way adequately deals or addresses concerns in respect of cumulative impacts which

could arise from the siting of both facilities in such close proximity to each other. The fact that there are a number of residential dwellings located directly between both facilities it is considered that the cumulative impact particularly in respect of traffic and odour could be significant. Further studies in this regard would therefore be warranted in my opinion. In combination effects arising from the siting of both developments in respect of ecological and aquatic environmental receptors should also be undertaken.

8.4 Procedural Issues

The grounds of the third party appeal highlight a number of perceived procedural problems associated with the application submitted and the Planning Authority's assessment on the application. The main issues raised in respect of procedural issues are dealt with below.

The appeal notes that the name of the applicant indicated in the newspaper notice is different to the name of the applicant on the planning application form. The applicant is referred to as *Gene Reilly* on the public notice and newspaper notice whereas under section 5 of the planning application the applicant is referred to as *Eugene Reilly*. I consider this to be a small clerical error and in no way impinged upon or prejudiced third party's rights in respect of submitting observations or appealing the planning application. I do not consider this matter to be material in terms of determining the application.

Reference is also made to section 18.1(d)(iv) of the Planning and Development Regulations which requires the applicant to indicate whether or not the development comprises of an activity requiring an IPPC or waste licence.

I have consulted the EPA Act 1992-2003 (as amended). And have had particular regard to Class 11 of Schedule 1 which relates to waste activities. I do not consider the facility in this instance would fall within the meaning of Class 11.1 in that:

'the recovery or disposal of waste in a facility, within the meaning of the Act of 1996, which facility is connected or associated with another activity specified in this schedule in respect of which a licence or revised licence under Part 4 is in force in respect of which a licence under the said Part is or will be required'.

The waste at this facility is derived, according to the information contained on file, from a wastewater treatment plant facility which is covered by a discharge licence and not a waste or IPPC licence. I can only conclude therefore that the activity in question would not require a separate waste or integrated pollution prevention licence.

It appears to the applicant in this instance would be required to register with the local authority and receive a 'Certificate of Registration' in accordance with the provisions of S.I. No. 32 of 2010 – *Waste Management (Registration of Sewage Sludge Facility) Regulations 2010*. However it appears on my evaluation that an IPPC licence or waste licence would not be required in this instance. If such a licence is required the applicant would be notified of such in applying for a certificate of registration with the local authority.

Again I do not consider that the applicant's rights in respect of submitting observations or appealing the decision of the Planning Authority to An Bord Pleanála have been compromised or prejudiced as a result of any potential contravention of Section 18.1(d)(iv) of the Regulations.

The grounds of appeal also argue that the applicant has failed to meet the requirements of Section 22(2)(b)(ii) on the grounds that all lands under his control have not been identified in the drawings submitted. It is not altogether clear from the information contained on file and the applicant's response to the grounds of appeal whether or not there are additional lands contiguous or in the vicinity of the subject site which are under his ownership and control. There is nothing in the grounds of appeal to suggest that the applicant has included lands for the purposes of the subject application which are not in his ownership. I again do not consider that such an omission should not be considered fatal to the overall application before the Board. If the Bord consider this to be a material consideration it can request the applicant to submit such information prior to determining the application and appeal.

Reference is also made to the grounds of appeal to the absence of a north point on all the drawings submitted and the requirement of the Planning Authority to make available any pre-application consultations carried out with the applicant. While these requirements did not appear to have been complied with in determining the planning application at local authority stage, again I do not consider these issues to be material in determining the current planning application and appeal before the Board on the grounds that third party rights have not in any way been

prejudiced in terms of objecting to or submitting observations in respect of the proposed development. An Bord Pleanála is not responsible for the keeping of records of any Planning Authority in respect of pre-application consultations.

10.4 Other Issues

10.4.1 Evidence of Consent to Spread on Adjoining Lands

A major issue raised in the grounds of appeal is that the applicant has not submitted evidence that the land on which the spreading of slurry is to take place is suitable for such landspreading and furthermore that the applicant has not received or demonstrated the consent from adjoining landowners for such landspreading. It is a requirement of the applicant and any farmers in the vicinity which are in receipt of treated sludge/biosolids from the subject facility 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*. As the Board is aware, these Regulations are very prescriptive in relation to storage, nutrient management and application of biosolids on farmlands. All farmers are obliged and required to comply with the above Regulations which are deemed to constitute good agricultural practice and farming management associated with the handling, management and spreading of manure. There is nothing to suggest that the applicant or any recipient farmers will not comply with their lawful obligations as required under the above Regulations. The spreading of sludge/slurry on agricultural lands are a matter of a separate specific regulatory regime and the applicant is required to comply with Regulations as set out under these other statutory regimes.

10.4.2 Hazardous Waste Issues

The grounds of appeal argue that the sludge in question may contain hazardous waste and as such it is inappropriate and may be prejudicial to public health to permit the spreading of such waste on farmlands.

The EPAs most up-to-date waste classification (valid from 1st June, 2015) clearly indicates under Waste Code 190805 that sludges from the treatment of urban wastewater is not classified as a hazardous waste¹. As indicated above, there are other statutory regimes and protocols in place to ensure that the landspreading of treated waste would not be prejudicial to public health.

¹ All Hazardous Waste streams are demarcated with an * in the catalogue.

10.4.3 Compliance with the Urban Wastewater Treatment Directive

The grounds of appeal also suggest that many of the wastewater treatment plants which would supply the facility in question do not comply with standards under the Urban Wastewater Treatment Directive. I would agree with the applicant in his response to the grounds of appeal that the reasons for non-compliance relate to exceeding discharge parameters into receiving waters rather than the nature of sewage sludge produced at the wastewater treatment plant. Standards in the Directive and in SI 254 of 2001, relate parameters in the discharge from the WWTP as opposed to sludge production. Therefore there is nothing to suggest that sludge/biosolids receiving at the facility are in breach of the Urban Wastewater Treatment Directive.

10.4.4 High pH Values in the Residual Sludge

The grounds of appeal also suggest that the alkaline stabilisation process undertaken in the treatment of sludge will pose a hazard to human health and damage biomass within the soil on the receiving lands. As already mentioned above there is a separate regulatory regime in respect of landspreading practices and it is a requirement that the stipulations and parameters set out in the separate regulatory regimes are complied with in any landspreading practices. It is generally accepted however that alkaline stabilisation of sludge, subject to best practice, results in a fertiliser that is generally beneficial to receiving soils and subsoils.

10.4.5 Projecting Splitting and EIA Requirement

There is no evidence of any project splitting in respect of the proposed development. The application for a similar type of development in the townland of Rossmeen approximately 750 metres to the north of the site is to be undertaken by a separate applicant and is independent of the current application before the Board. The current development before the Board appears to be a standalone development and therefore does not involve any project splitting in terms of artificially subdividing a larger project into separate entities in order to circumvent EIA requirements.

With regard to the requirement to carry out an environmental impact assessment, if the Board are minded to grant planning permission for the proposed development it could consider requesting a sub-threshold

EIA under the provisions of Schedule 5, Part 2 11(d) of the Planning and Development Regulations, 2001 in respect of sludge deposition sites where the expected annual deposition is 5,000 tonnes of sludge (wet). While the intake at the facility in question is below the 5,000 tonne threshold, consideration could be given to requesting an EIS on the grounds that a similar type facility is proposed in the vicinity where the annual intake is expected to be 15,000 tonnes.

I note however that that amount of sludge to be handled at the facility falls below the mandatory threshold for an EIA and therefore any such EIA request would be at the discretion of An Bord Pleanála.

11.0 Appropriate Assessment

The subject site is located approximately 100 metres to the west of the Moynalty River. While this river is not designated as a European Site, it flows into the River Boyne and Blackwater SAC (Site Code: 002299) approximately 1.3 kilometres to the south of the site. The features of interest associated with this SAC include alkaline fens, alluvial forests and perhaps more importantly aquatic species including River Lamprey, Salmon and Otter. The latter aquatic species are particularly sensitive to changes in water quality. I have argued above that the proposed development could pose an environmental risk to the surrounding area including the Moynalty watercourse by reason of the nature of waste to be stored and treated on site and the fact that the infrastructure on site is not deemed to be fit for purpose in terms of adequately containing effluent within the site. I therefore consider that the use of the facility for the storage of municipal waste could be prejudicial to the receiving environment and therefore likely significant effects on the integrity of the qualifying interests associated with the River Boyne and Blackwater SAC cannot be ruled out. In the case that the Board are minded to grant planning permission, it is recommended that the applicant be request to furnish an NIS prior to determining the application.

11.0 CONCLUSIONS AND RECOMMENDATIONS

Arising from my assessment above, I consider the proposed development to be contrary to the proper planning and sustainable development of the area and I therefore recommend that planning permission be refused for the reasons set out below.

If the Board however, do not concur with the above conclusion and are minded to grant planning permission for the proposed development in this instance, I recommend that as a minimum prior to determining the application the Board requests the following additional information.

- A structural survey of all buildings and perimeter walls within the site to ensure that all effluent stored and treated on site can be securely contained within the confines of the site.
- Details of the amount of lime to be used and stored on site for the treatment of sludge.
- Further details of the treatment of sludge to be undertaken on site.
- A report detailing cumulative impacts arising from the development in question and from the proposed sludge facility which is currently under consideration by Meath County Council under Reg. Ref. KA15/1141.
- Details regarding the frequency, method of emptying and disposal of effluent in the liquid collection pit on site. The Board should also consider requesting the applicant to submit details of the covering of the liquid collection pit as an odour abatement measure.
- The applicant should be requested to submit a full Natura Impact Statement in respect of the proposed development.

12.0 DECISION

Refuse planning permission for the proposed development in accordance with the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

1. It is considered that the agricultural sheds on site are not suitable for the handling, storage and treatment of sludge/biosolids on the grounds that the structures and boundary walls around the subject site do not appear to incorporate sufficient structural integrity to ensure that all effluent can be sufficiently contained within the site. The use of the structures and site for the storage of sludge/biosolids would therefore be prejudicial to public health.

2. It is considered that insufficient information has been submitted with the planning application detailing the methods involved in the treatment of sludge. The Board is not satisfied that the applicant has adequately demonstrated that there will be no requirement to store hydrated lime on site for use in the treatment process having regard to the number of deliveries of waste to the site on a weekly basis and the requirement to treat sludge on a weekly basis. In the absence of such details, it is considered that the use of the site for the storage and treatment of sludge/biosolids is prejudicial to public health.
3. Taken in conjunction with the current proposal for a similar type facility under Planning Application Reg. Ref. KA15/1141, it is considered that in evaluating the proposed development, the applicant has failed to take into consideration potential cumulative impacts arising from both developments being located in such close proximity to each other.
4. On the basis of the information provided with the application and appeal and the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans and projects would not be likely to have a significant effect on the River Boyne and Blackwater SAC (Site Code: 002299) in view of the site's conservation objectives. In such circumstances the Board is precluded from granting retention of planning permission for the facility in question.

**Paul Caprani,
Senior Planning Inspector.**

2nd February, 2016.

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