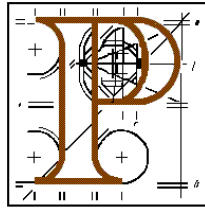


# An Bord Pleanála



## Inspector's Report

**PL01.245930**

**DEVELOPMENT:** - Twin grain stores (2,268 square metres), control room, grain silos, grain intake, elevators, conveyors and walls, concrete yards (3,624 square metres) and ancillary works at Castlemore and Tullowbeg, Tullow, County Carlow.

### PLANNING APPLICATION

**Planning Authority:** Carlow County Council  
**Planning Authority Reg. No.:** 15/57  
**Applicant:** Brophy Agriservices  
**Application Type:** Permission  
**Planning Authority Decision:** Refuse Permission

### APPEAL

**Appellant:** Brophy Agriservices  
**Type of Appeal:** First v Refusal  
**Observers:**  

1. P.J. Fitzgibbon
2. Pat Shannon
3. Kenneth and Martina Nolan

**DATE OF SITE INSPECTION** 10<sup>th</sup> March 2015

**INSPECTOR:** Mairead Kenny

## **SITE LOCATION AND DESCRIPTION**

The site is at the edge of the town of Tullow and to the rear of an existing agricultural processing and sales premises known as Brophy Agriservices. The site outlined for the purpose of the application includes the existing facility and a plot of land to the rear. The stated area of the overall site is 4.64 hectares. The area subject of the current development is stated to be 1.53 hectares.

There are two main activities carried out at the site namely the taking in, processing and drying of grain prior to storage and secondly there are sales of feedstuffs, hardware and agricultural products including fertilisers. The grain drying and storage takes up the south-eastern side of the site. At this location are the main grain stores and the drying equipment and silos. One of the stores, which is described on the application drawings as the General Purpose store is in use for storage of specialist grains in small quantities and some machinery.

At the eastern site boundary are the nearest sensitive receptors, a group of houses located along the regional road and some ancillary accommodation. In the centre of the site is a large yard much of which was in use for storage of fertilisers at the time of my inspection. The north-western end of existing premises is the location of the general store in which various chemicals and other agricultural products are stored prior to sale. South of those buildings and close to the access road is the parking area and the offices.

The location of the proposed development is to the north-east of the existing facility. At this location there is another plot of land in the applicant's ownership for which there are no proposals at this time. The extended site is taken from a very large open field which is separated from the existing business by a palisade fence. A range of residential properties are visible from the site of the proposed development. The north-western boundary is the location of a stream, which is culverted.

The roadside boundary of the site is marked with a galvanised steel palisade fence. There is a grass verge and a shrub planted along the entire frontage and maintained at a height of 1 metre approximately. The site is within the 60kph speed limit and the regional road was not heavily trafficked at the time of my inspection.

Photographs of the site which were taken by me at the time of my inspection are attached to the rear of this report.

## **PROPOSD DEVELOPMENT**

The stated purpose of the development is to provide sufficient on site storage capacity for the volume of grain currently handled by Brophy Agriservices Limited. All grain is received on site for weighing and drying at harvest time and existing stores are filled with dried grain. Currently the volume of dried

grain is beyond the capacity of existing stores and the excess is transported off site for storage in rented accommodation and may be transported back onto the existing site at Castlemore as capacity becomes available. The development would make it unnecessary to transport grain off site for storage thus reducing traffic volumes particularly during the busy harvest season.

The development will consist of

- Erection of twin grain stores (2,286 m<sup>2</sup>), control room, 2 no. grain silos (266 m<sup>2</sup>) grain intake, elevators, conveyors and walls, concrete yards (3,624 m<sup>2</sup>) and ancillary works.

The application details are described in submissions received by the Planning Authority on 9<sup>th</sup> March 2015 as revised by further information received by the Planning Authority on 27<sup>th</sup> October 2015.

The requested further information related to the land holding, layout and design, Masterplan, Environmental Study, landscaping, photomontages and hours of operation.

The application and further information submissions include:

- Garden of Eden Landscaping Limited - planting along the perimeter and at the berm
- stormwater calculations for the proposed development
- Damien Brosnan Acoustics - noise impact assessment
- TMS Environment Limited - potential impacts on air quality.

Water for firefighting purposes has been agreed with the Carlow fire service.

Wastewater management/treatment is provided by way of a system installed in accordance with Planning Reg. Ref. no. 04/413.

Other aspects of development are as previously provided - existing storm water attenuation tank and entrance.

A map received with the appeal (drawing no. 342/266C) refers – this attempts to demonstrate that the proposed development cannot be accommodated within the existing site.

## **PLANNING HISTORY**

Under Planning Reg. Ref. 02/12 permission was granted for the erection of a grain storage and handling facility consisting of a grain store, 2 no. grain silos,

intake and processing equipment, weighbridge, septic tank, yard and ancillary works.

Under Planning Reg. Ref. 04/413 permission was granted for an extension to the above development comprising twin grain stores, 2 no. bulk stores and 3 no. grain silos with elevator and dust house, intake and processing equipment, feedstuffs and general store and other development. The conditions attached included annual reporting on dust and rodent monitoring, control on noise, installation of 3m high berm at site boundary with nearest noise sensitive receptors and a general landscaping requirement. The development was to cater for 20,000 tonnes per annum according to the EIS submitted as part of the application. No condition relating to the scale of the operation was attached by the Planning Authority. A drawing received by the Planning Authority by way of further information indicates landscaped berms.

Under Planning Reg. Ref. 07/588 permission was granted to retain a dust house, electricity substation, retaining wall and other development.

Under Planning Reg. Ref. 11/56 permission was granted for a general purpose store for feedstuffs, hardware and agricultural inputs. The stated area of the store was 1,160 square meters and the existing buildings were stated to be 5,200 square metres. The planner's report noted the significant scale of the existing buildings on the site and the infill nature of the store. No conditions of note were attached by the Planning Authority but the general thrust of the environmental controls already in place was re-iterated.

## **DECISION OF PLANNING AUTHORITY**

The Planning Authority decided to refuse permission for two reasons which are summarised below:

- Not satisfied on the basis of details submitted that the proposed development would not negatively impact on the amenities of residential properties in the vicinity in terms of noise and dust given the scale of the existing and proposed development.
- When taken in conjunction with existing development, due to the massing of height of structures proposed on an elevated, open and exposed site, would be unduly obtrusive in the landscape and have an unduly negative impact on visual amenities of residential properties in the vicinity.

The report of the Roads Engineer dated 27<sup>th</sup> March 2015 indicates no objection.

The report of the Senior Executive Engineer (Environment) dated 20<sup>th</sup> November 2015 notes the further information requested and recommends that permission should not be granted until certain matters relating to noise and dust are addressed.

The report of the Executive Planner dated November 23<sup>rd</sup> states that there is no opportunity to seek clarification of additional information and recommends a refusal of permission. The report notes the proposed 4m berm and the hedgerow planting with 1.5m high trees and states that in view of the height of the proposed grain stores and the varying ground levels which are to be located on elevated lands, the development would not be adequately screened or assimilated into the landscape.

## **GROUNDS OF APPEAL**

The main points of the first party appeal are

- The business involves grain intake, drying and storage. The business involves sale to the trade over the remainder of the year.
- At the pre-application meeting no significant concerns were raised.
- We enclose a report addressing the acoustic impact.
- The report of TMS environment clarifies issues relating to dust impact.
- The main intake period (33% of total) is early September and the average annual intake is 35,000 tonnes of grain mainly wheat, barley, oats.
- All other options for extension were ruled out due to proximity to residential development, springs, elevation, health and safety and fire and other constraints.
- The subject site was tested for load bearing capacity and springs and adjoins the existing complex and is furthest from residential development.
- It is acknowledged that the development has a visual impact and a detailed landscaping plan was submitted.
- Elevators and conveyors will be similar to those already in place, will be enclosed and sealed ensuring no dust and ensuring noise submissions are well below minimum standards. Continuous monitoring will take place.
- The enclosed acoustics report and dust impact report demonstrate that there would in fact be a positive effect due to reduced handling in open yards and reduced truck movements.
- Drawing no. 342/266C rev. 2 submitted with the appeal demonstrates the impracticality of incorporating the development within the site. The applicant does not own any other lands at any other location.
- We complied as far as possible with request to provide photomontages.
- The finished floor level will be marginally lower than the existing stores and the excavated material will be used to construct a berm.

- A number of the structures/processes referred to by objectors do not occur at the site.
- There is no scientific evidence or proof regarding nuisance and health impacts and the development will reduce dust and noise emissions.
- The noise monitoring survey was undertaken in a period of high intake in the month of September.
- There is not an intensification of activities but an attempt to accommodate the existing business in house.
- We are very aware of trading in a location close to local residents, which location was insisted on by the Planning Authority in 2001 and the proposed development in terms of the reduction of traffic volumes, noise and dust emissions in conjunction with increasing commercial competitiveness of an established business should be favourably considered.

## **RESPONSES TO APPEAL AND OBSERVATIONS**

### **Planning Authority**

No response received.

### **PJ Fitzgibbon**

The main points of this observation include:

- The site shares a boundary with houses on the Castledermot Road and two estates on the Tullow side of the town and the field slopes downwards to the Carlow Road.
- Rainwater from roofs would run towards the Carlow Road adding to problems with existing septic tanks.
- The existing facility has devalued adjoining properties and new proposals would make them virtually unsaleable.
- The buildings would be a blight on the skyline and affect the visual amenities of residents.
- The facility gives rise to vermin including along the road in times of spillage from lorries.
- The proposal shows a total disregard for resident's health and welfare and the common good and the applicant has more suitable sites available.
- My original letter of objection refers and this notes the toxic nature of emissions, removal of shelter belts, serious issues with vermin and the possibility of further development. Another letter refers to noise from dryers which operate 24/7. Noise together with dust is described as a nightmare for people living closest to the store. The facility needs to be closed down and relocated to a more suitable site away from housing.

### **Pat Shannon**

The main points of this observation include

- Photographs show dust throughout the area at the rear of all houses in the immediate area effecting approximately 120 houses.
- The new development will be at least 50% closer to all houses.
- More suitable site to the west using the same main entrance.
- The enclosed original letter of objection to the Council refers to noise pollution relating to the building 150 metres from our back garden.
- Noise will impact and cause loss of sleep at night over 9-10 months of the year and 24 hours seven days a week.
- We have had previous cause to complain regarding air pollution including in June, July 2013 and 2014.
- Vermin are a serious problem since the removal of all hedgerows and mature trees on this 25 acre plot. We have seen rats approaching our garden boundary wall and climbing over and entering our garden shed.
- We attach a map which marks the ownership of fields by the applicant.
- There are other entrances and we are concerned that these could be used by agricultural vehicles servicing the new building.
- The building should be moved to land owned by Mr Brophy located left at the main entrance to the original building.
- Another enclosed letter indicates that during the time of the noise survey sound was not audible from the original stores.

### **Kenneth and Martina Nolan**

The main points of this observation include

- The lands owned by the applicant includes lands to the west.
- Any further intensification of activities or the use of the Castledermot Road entrance would negatively impact on our health and amenity.
- At minimum the EIS should be updated and an EIA completed.
- Issues relating to potential contamination of firefighting water and need to contain firewater on site for testing prior to discharge.
- Surface water will discharge to the culvert which drains to the Slaney River Valley SAC – screening for AA required at minimum.
- A pollution incident on the Slaney was caused by hydrocarbons requiring absorption booms to be placed in the river.
- The stream discharges 50m upstream of the town's water intake.
- The development will result in the generation of large volumes of dust due to receiving and shipping, and other parts of the process.
- The nature of the dust includes spores of smuts and mould, insect debris, pollen and field dust all of which has a high organic content and a substantial suspendable fraction and poses an explosion hazard.

- Need detail relating to the construction of the proposed extension, dust abatement measures or ambient dust monitoring to be employed.
- It is doubted that the maximum air quality impact was captured.
- Gauges D1 and D2 were damaged and the data is incomplete.
- Our garden is 300 metres from the existing facility boundary and the extension will impact on our health and use of our back garden.
- Photographs show a large plume of dust being emitted from this site.
- We do not accept that a 100 metres separation mitigates impacts.
- At present we can hear the dryers from the existing development operating and during harvest season it intensifies.
- Giving the height of the proposed silo and conveyor there would be an increased level of noise from the operation of the structures.
- Potential for opening and closing of doors will be a noise nuisance.
- Subsequent to the purchase of land in 2013/2014 all existing trees including mature trees and hedgerows within the site of the proposed extension were removed.
- The landscaping proposed should only be considered in terms of a visual screen and is not suitable as a noise abatement method.
- As all trees are deciduous it is questioned whether there will be any visual screen in the winter months.
- The berm and the landscaping may exacerbate noise emissions.
- While the applicant indicates the hours of operation it is noted that other information refers to grain drying being from August to October depending on the weather and being a short but extremely intensive season with dryers operating 24/7 during that period.
- The 2015 harvest involved the operation of the dryers on a 24 hours basis and these were audible in our children's bedrooms during the night and disturbed them from sleep.
- Early morning arrival of grain lorries.
- We totally object to a grant of permission.

#### **Department of Arts, Heritage and the Gaeltacht**

DAHG refers to the proximity of the development at 500 metres from the Slaney River Valley candidate SAC which supports a range of qualifying interest habitats and species. Screening for Appropriate Assessment required. Comments refer to use of non- native species and to control of invasive species.

#### **ASSESSMENT**

Following my inspection of the site and surrounding area and consideration of the information available including all written submissions to the Planning



Authority and the Board and the prevailing planning policy, I consider that the main issues in this appeal are:

- whether the development is acceptable in principle in terms of the prevailing policy context
- whether the development is related to intensification of use
- site selection and layout
- whether the development would give rise to adverse impacts on the existing residential amenities of the area
- Environmental Impact Assessment
- Appropriate Assessment.

### **Principle**

The site is within an area governed by the Carlow County Development Plan although it is close to the boundary of the area subject to the Tullow Local Area Plan. The general thrust of the development plan policies applying to the site and the immediate vicinity includes a positive presumption towards facilities of the type proposed.

The policy for rural areas is generally to facilitate development of industries, which are dependent on natural resources including crops. Tullow itself is identified as a 'district centre'. These act as an important driver for local economies including in the large rural hinterland. Identified sectors of economic development include agri-food, distilling, manufacturing and others.

In effect subject to the protection of the environment and residential amenities there is no objection in principle to the current proposal. Indeed the development is of a type which is identified as being important to the county's economy arising from its role in supporting agriculture.

In relation to the principle of the development I note that the applicant places considerable emphasis on the history of the decision to re-locate the facility from its former centrally positioned site. That decision to re-locate the business in 2000 is stated to have come about as a result of the Council insisting forcefully on the subject site. In view of the history of the site and other factors including the improvement of an established business the applicant considers that the proposal should be favourably considered.

I agree, in conclusion that the nature of the development proposed is one which should be supported in principle. Protection of the amenities of the area is nevertheless a basic requirement.

### **Intensification of use**

The stores are stated to cater for grain which is already dried on the site, which in the absence of sufficient storage is moved off site after drying, then imported back over the winter period for sale to third parties.

Therefore the development is stated not to involve an intensification of use on the site. I consider that there is insufficient information presented to support that statement. The permitted use based on the EIS received by the Planning Authority in 2004 is for a development which would be capable of handling 20,000 tonnes of grain per annum<sup>1</sup>.

The applicant indicates in the current submissions that the average annual intake is 35,000 tonnes of grain. It appears to me that the evidence points to a successful operation which has since its main inception in 2004 almost doubled in terms of the volume of grain handled. I also note that the first party indicates that there are no expansion plans at present, but do not firmly rule out future expansion.

I consider that the rationale for the development proposed relates to the expansion of a facility, which has already intensified in use. I note also that the size of the concrete yard to the front of the office / grain store is much larger than that indicated under Planning Reg. Ref. 04/413 and would not appear to have been authorised under any subsequent permission<sup>2</sup>. The level of storage of fertilisers in that area is considerable and it is unclear to me whether this is fully regulated by any permission though it is perhaps deemed to be ancillary. In the event of a grant of permission and for the purposes of monitoring and controlling any future incremental growth I consider that it would be appropriate to require annual submission of records to the Planning Authority. Any such records might address both the agricultural products sales and the intake of grain. That could be addressed by condition.

The question as to whether or not an intensification of use has occurred is relevant to the current scheme insofar as (for example) the air impact is described as positive as there will no longer be a need for grain to be held in outdoor yards. The permitted development provided for storage of the 20,000 tonnes of grain which was the stated intake at the time.

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<sup>1</sup> The latter figure included capacity for storage which was already on the site since the parent permission which dates to 2002.

Regarding the extent of the concrete yards, full details of Planning Reg. Ref. 07/588 are not available to me but the description of the development does not refer to extension of the yard.

### **Site selection and layout**

I now address the matter of whether the direction of expansion and the detailed site layout are optimal. The stated main function on the site (based on the 2004 EIS) related to the sale of fertilisers, chemicals and other products within the site. This aspect of the business takes up a very substantial part of the overall facility, as I have noted earlier. It is not clear to me that this aspect of the business remains the primary aspect of the operation. I would note however, that in terms of a use which is compatible with a residential area it would appear to be relatively benign in nature. The aspect of the existing development which concerns residents is the grain drying and storage as it is this function which generates most noise, dust and traffic. It is that function which is to be increased.

A significant concern to residents in the area and indeed to the Planning Authority is that the site selection process was robust. Residents in particular refer to a weakness in this regard due to the alleged ownership by a director of lands to the west of the existing facility. While the applicant's submission refers to sites to the west being ruled out due to springs, the main argument presented regarding that option related to levels and lack of ownership.

As set out below I agree with the conclusion of the Planning Authority as presented in the final planner's report, which is that following the response to further information there remain a number of concerns and shortcomings in documentation including in relation to the assessment of alternative sites and the feasibility of extending within the existing complex. I consider that in the appeal submissions the applicant has not provided any additional evidence of any significance related to either the future use of the overall holding or the alternative sites.

Development within the facility was ruled out by the applicant for a number of reasons including need to lower ground and excavate large amounts of material, difficulties with access, need to move existing site roadway, wheel wash and firefighting reservoir, inadequate space to relocate these infrastructure details, difficulties meeting fire service requirements for adequate reserves of water, difficulties in providing adequate sight lines for new site entrance.

I agree that these are all considerations which have to be taken into account. However, I do not agree with the applicant's position that the existing yard barely meets existing requirements as there is a large area set out for storage of fertilisers. Retention of an access route for fire tender to the eastern and southern side of the complex is another factor but the land requirement is not significant. Further in relation to the use of the existing facility, I note that the intensity of use of the general purpose stores is low and perhaps this function could be re-organised. There will be seasonal variations to the usage

patterns on the site and I had the benefit of one site inspection only. The onus is on the applicant to demonstrate that the existing facility could not be re-organised to accommodate additional stores and in my opinion that is not demonstrated.

Regarding alternative sites including the lands to the west and others it would appear to me that it is not proven that these are not within the control of the main Director of the company seeking permission. That claim has been clearly made by third parties throughout the process and should be easy to refute. Secondly I note that the reference to springs is not explained or substantiated.

Based on the available information I consider that the conclusion by the Planning Authority in relation to the lack of comprehensive consideration of alternative sites is reasonable. As such in view of the proximity of the proposed development to existing and future residential development and having regard to the likely noise and dust impacts and general nuisance, which would be associated with the proposed development, a grant of permission would be premature.

The absence of a master plan for the overall lands held by the applicant is also noted. The possibility of future extension into the area adjacent the proposed stores should be considered at this time. It is not reasonable in my opinion to determine this application without considering implications for other lands in the vicinity, including the vacant plot within the applicant's ownership. Similarly, the consequences of the development for the zoned residential lands also needs to be considered.

### **Residential Amenities**

The main concerns identified in the decision of the Planning Authority are noise, dust and visual amenities. The observations refer to other issues including vermin. I consider that the substantive impacts relate primarily to noise and dust, other effects being appropriate for mitigation by landscaping and proper management of the facility.

#### *Noise*

Sources of noise on site are related to traffic / machinery movements, seasonal drying of grain and ongoing periodic aeration of grain in stores. The development subject of this appeal does not involve directly drying of grain and is stated to give rise to reduced traffic movements which will reduce noise at certain sensitive receptors. I refer again to the level of usage of the existing facility. While there is no drying equipment proposed the operation is catering for more grain than originally envisaged. That is essentially the rationale for the proposal. As such there is an indirect connection between the proposed development and the use of drying equipment.

Regarding the proposed development the assessment of noise impacts is primarily a 24 hour noise survey undertaken in mid-September when the facility was in operation and the grain drying operations continued throughout the night and a loader was in regular use in the yard including during the night.

The main mitigation presented in the application submission relates to the location of the building and the direction of the opening, which is away from residential properties.

The noise levels reported from the assessment are presented in Table 1 of the consultant's report. Unacceptably high levels of noise are acknowledged in the noise impact report - these refer to the houses at N1 to the south-east. The noise is stated to relate to emissions from ground level aeration fans. I note the presence of a dwellinghouse and other residential units at this location within 50m of the building. As a result of this aspect of the existing development the first party submissions state that existing evening and night-time criteria are exceeded at the adjacent dwellinghouse. An evening reduction of 3dB and a night-time reduction of 8dB is required, it is stated in the consultant's report.

The submission of third parties testify to problems with noise from the existing facility. Residents as far away as 300m from the existing operation complain that noise is heard (which is acknowledged in the noise impact assessment report) and that it intensifies in the peak season. Table 1 which records the results of the survey shows that criteria for noise levels are met at all locations other than N1.

Regarding the mitigation of existing noise problems the appeal submissions further address this matter in the statement in the report which describes the acoustic enclosures to be installed around each fan. This is a partial response to the issue raised by Planning Authority. However, the applicant has not demonstrated that these measures will be effective. As a similar development is subject of the current application (namely grain stores as opposed to grain drying) the question arises as to what type of aeration fans will be installed at the new facility and what their acoustic impact will be. I noted at the time of my inspection that there are three forms of grain aeration taking place and that one of these includes a system which operates entirely within the store. That approach may be preferable for any extension of the facility. In principle I agree with the thrust of the submissions in the noise impact assessment to the effect that the noise should be capable of mitigation. However, in terms of the application submissions I do not consider that the point is proven.

The conclusion presented by the applicant is that the resulting increases in noise (0 to 4dB) is not significant and does not warrant mitigation. Pending resolution of problems with the existing facility and demonstrating a suitable approach, I do not consider that the Board can be fully satisfied that the applicant has presented acceptable solutions.

Regarding the reduction in movement of grain to external stores, this is stated to decrease the traffic levels over the six week harvest period from 3340 to 2400 and will have a similar effect over the 'export period' between October and June. A minor reduction in road traffic noise is therefore indicated, which will benefit the residential properties to the south-east and along the regional road, but only by a not significant level of 1dB.

There is a requirement under the parent permission that the applicant submit on an annual basis details of noise surveys, which shall be taken as requested. It is not clear whether the Planning Authority has requested such surveys to date. The applicant does acknowledge breaches of the conditions attaching to the original permission however and sets out mitigation measures which I consider are not demonstrated to be a definite solution. Neither is there a timescale for implementation. In these circumstances I do not recommend that expansion of the facility be permitted.

#### *Dust*

The report of TMS Environment Ltd (air quality assessment) identifies the purpose of the development as being for the storage of grain which is already processed and dried at the site but for which there is insufficient storage space. The basis for the report includes a survey of air quality at the boundaries of the site undertaken in the period between 2<sup>nd</sup> September 2015 and 5<sup>th</sup> October 2015, as well as a review of other available air quality information. I consider that the selected period would have captured the worst possible conditions as the grain harvest was underway at the time of the survey. The report noting the results of the survey and the location of the nearest the closest residents up wind of the site relative to the prevailing wind concludes that there is negligible potential for emissions to adversely impact.

I consider that the conclusions of the TMS report are undermined by the failure of two of the four monitoring stations and the limited data presented from the other two stations. Regarding the existing facility, table 1 shows only one result from each of the two stations and while both are significantly below the commonly applied dust deposition limit value of 350mg/m<sup>2</sup> /day there is no detailed information regarding daily values. The TMS report refers to a comprehensive survey of baseline air quality, which is stated to demonstrate that the site is being operated and managed in a manner which is well within accepted limits. Based on the evidence submitted I do not consider that the

air quality impacts of the existing facility are demonstrated. The absence of a comprehensive report on baseline conditions is unfortunate as such evidence should be available to the applicant at least from the annual monitoring results presented to the Planning Authority. The applicant's submission including the appeal comments do not in my opinion adequately address the smaller particle size and do not model for these elements, which are of particular concern from a health perspective and are likely to travel further and which are also stated to be up to 25% of all dust from this type of facility in an Irish context. The latter is acknowledged in the submission by the applicant to the appeal.

Furthermore, even taking the applicant's own figure of 100m into account I estimate that there is a significant area of zoned lands within the dust deposition zone. The implications of the development for these lands has to be considered to be likely to discourage future residential use.

I note that the applicant provides information also relating to the construction phase impacts. I do not consider that this is a material consideration in the appeal. I refer also to the comments made in relation to the likely reduction of dust emissions associated with the development due to the reduction in movement of grain. The proposed development however also results in a shift in activity to the north-east, within the prevailing wind and closer to residential properties. While I agree that minimising movement of grain is desirable for many reasons I am unconvinced that it is demonstrated that the scheme would be beneficial in terms of air quality impact.

The development by reason of its proximity to residential development and residential zoned lands is not ideally situated including by reason of the potential for dust impacts. I consider that the onus should be on the applicant in this case to demonstrate that the proposal will not adversely impact on the nearby residences. Considering a number of the points made in the observations including in relation to the particular nature of the emissions and the distances which they would travel, the applicant's submissions do not adequately address the potential impacts of the extension.

I conclude as follows:

- by reason of the failure of two of the dust monitors and the lack of detailed assessment of small particles (PM<sub>10</sub> and PM<sub>2.5</sub>) I consider that it is not demonstrated that the existing development is not giving rise to adverse air quality impacts and therefore there is no basis for the conclusion that the proposed facility would be similarly acceptable
- the proposed development would be likely to adversely affect the development potential of adjacent residential lands

- a continuous program of monitoring should be undertaken prior to a grant of permission.

### **Environmental Impact Assessment**

The question has arisen in observations as to whether or not an Environmental Impact Statement is required. I have examined the prescribed classes of development set out under Schedule 5 and am satisfied that the development does not fall within any of these classes and, therefore, that there is no requirement for an EIS.

### **Appropriate Assessment**

The site of the proposed development appears to be directly connected by way of a culverted stream to the Slaney. The Slaney River Valley Special Area of Conservation is situated to the east of the site and within a few hundred metres. The qualifying interests of the Site include Freshwater Pearl Mussel, Lamprey, Salmon and Otter, all of which would be deemed to be susceptible to water pollution including in the case of Freshwater Pearl Mussel to relatively minor siltation events.

The hydrological connection between the site and the Slaney is not disputed. I consider that the observers have raised a range of issues which need to be addressed as design mitigation measures in order to rule out any likelihood of significant effects on the SAC. Those effects could arise from construction, hydrocarbons or in an extreme case from firewater discharge.

Based on the information available I do not consider that the Board can be satisfied that the development would not give rise to no significant effects having regard to the conservation objectives of the Site.

### **Other issues**

Notwithstanding the proposed landscaped berm the development would be highly visible and due to its industrial nature could materially affect the development potential of those lands. While this impact is reasonably susceptible to mitigation and does not in my opinion warrant a reason for refusal I also note that the planning on the existing berms has not matured in the manner envisaged in the earlier permissions. In the event of a grant of permission a condition requiring a five year management contract and detailing species would be appropriate.

## **RECOMMENDATION**

I recommend that the Board uphold the decision of the Planning Authority to refuse permission for the reasons and considerations set out below.



## **REASONS AND CONSIDERATIONS**

1. Having regard to the site's close proximity to the edge of Tullow and to the nearby residential development, it is considered based on the submissions presented with the application and the appeal that the proposed extension of the existing facility to the north-east of the site would be likely to give rise to noise and dust impacts, which would not be compatible with the protection and residential amenities and might undermine the future development of a town designated as a 'district town' in the settlement hierarchy in the current Carlow County Development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**Mairead Kenny**

**Senior Planning Inspector**

**15<sup>th</sup> April 2016**