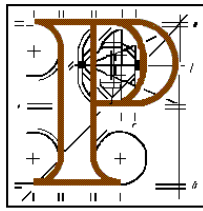


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL26.246813

Development: Retention of agricultural development at Tacumhin, Co. Wexford.

Planning Application

Planning Authority: Wexford Co. Co.

Planning Authority Reg. Ref.: 20160343

Applicant: Mr. James Turner

Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant(s): Mr. James Turner

Type of Appeal: First Party

Observers: None

Date of Site Inspection: 5th October 2016

Inspector: Emer Doyle

1.0 SITE LOCATION AND DESCRIPTION

The appeal site, which has an area of 1.14 hectares is located in the townland of Tacumshin, on the south coast of Co. Wexford.

The site currently comprises of a farm yard, agricultural building, cubicle yard, slurry lagoon, cattle underpass, access routes and paving.

The site is located within 250m of Tacumshin Lake SAC and SPA and is bounded to the northwest by a stream which drains to the SAC. There is an existing earthen berm adjacent to part of the stream. There are six recorded monuments within a 500m radius of the site. An Archaeological Assessment accompanies the application which details that there previously was a tower house (WX053-004) on the site of the development but that this was removed from the site during the 1980's by the previous owner.

The site is served by a private road and the area is primarily agricultural in nature.

A set of photographs of the site and its environs taken during the course of the site inspection is attached.

2.0 PROPOSED DEVELOPMENT

The development comprises of the retention of the following:

- Agricultural shed c. 1046m² comprising original shed constructed c. 1980 including 152m² milking parlour and recent extension of 76m² to the rear of an existing shed.
- Concrete roofless cubicle yard (c. 1275m²) to rear of shed.
- Extension to previously existing slurry lagoon (c. 513m²).
- Bored well adjacent to the site entrance.
- Cattle underpass south of the site access.
- Hard standing areas, access routes and paving.
- The application is accompanied the following:
 - Archaeological Assessment
 - Report prepared by engineer regarding the slurry lagoon and its potential to release polluting effluent to the environmentally sensitive lands and waters in the vicinity of the development, in particular Tacumshin Lake.
 - Appropriate Assessment Screening Report which includes a Hydrogeological Report (Appendix II).

- Report prepared by an agri-business consultant regarding current farm management arrangements, impact on the environment and future farm plans.
- Planning Report.

2.0 PLANNING HISTORY

PA 20150119

Permission refused by Planning Authority for retention of existing agricultural shed and permission to erect a new roof over existing slurry lagoon, erect new roof over existing cubicle yard, erect new hay shed and erect 2 No. slatted cubicle sheds with associated site works.

Enforcement

0006/2014

Unauthorised works to a Right of Way, case was closed pending a planning application for retention and regularisation of unauthorised works.

4.0 PLANNING AUTHORITY DECISION

4.1 TECHNICAL REPORTS

Planning Report

The planner's report noted that a total of 3 No. submissions had been received. It was considered that planning permission cannot be granted based on the deficiencies in the information submitted, as it has not been demonstrated that the development is acceptable in relation to the potential negative impact on Tachumshin Lake SAC/SPA. It also noted that the Planning Authority was precluded from assessing an application where a Stage 2 Appropriate Assessment was required under Section 34 (12) of the Planning and Development Act 2000 (as amended).

AA Screening Report

This report noted that there were 13 No. Natura 2000 sites within 15km of the site. It concluded that having regard to the

precautionary principle, it is considered that significant impacts can be ruled out and stage 2 Appropriate Assessment is not required.

Senior Executive Scientist

No objection subject to conditions.

Biodiversity Officer

This report notes that there are three possible flow paths between the farm yard and Tacumshin Lake. It concludes that potential exists for indirect impacts on Lagoon habitat that occurs within Tacumshin Lake cSAC with potential for deterioration of water quality with surface water and groundwater pathways present. It has not been established beyond all reasonable scientific doubt that the slurry lagoon in its current construction and condition could not present a risk of effluent escaping on the adjoining Natura 2000 sites exist.

Prescribed Bodies

Department of Arts, Heritage, and the Gaeltacht

Archaeology – No objection in relation to archaeology. Recommends permission subject to conditions.

Nature Conservation – advises that the Local Authority may wish to consider expert review of the adequacy of the hydrological assessment report in establishing as a matter of certainty that there will be no significant adverse water quality impacts on the downstream SAC and SPA. It notes that the hydrological assessment report recommends three measures to address water quality protection. It advises that if there are mitigation measures necessary to ensure avoidance of impact on the integrity of the lagoon and associated wetlands, then the assessment should proceed to Stage 2 and a Natura Impact Statement should be requested as Further Information.

4.2 Planning Authority Decision

The Planning Authority refused permission for two reasons as follows:

1. The proposed development would be located adjacent to the Tachumshin Lake candidate Special Area of Conservation and Special Protection Area, (Site Code 004092) Natura 2000 site. The Planning Authority is not satisfied, on the basis of the information submitted in connection with the planning application and in the Natura Impact Statement, that the proposed development would not adversely affect the integrity of this European site in view of its conservation objectives. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.
2. The site is directly linked to Tacumshin Lake candidate Special Area of Conservation (Site Code 000709) and Special Protection Area, (Site Code 004092) Natura 2000 site, therefore a Stage 2 Appropriate Assessment is required to assess possible impacts on this Natura 2000 sites. Under Section 34(12) of the Planning and Development Act 2000 (as amended), the Planning Authority is precluded from assessing a planning application for retention where a Stage 2 Appropriate Assessment is required and the applicant must apply to An Bord Pleanála for leave to consent under Section 177C of the Planning Act.

5.0 GROUNDS OF APPEAL

A first party appeal against the Council's decision was submitted on behalf of the applicant. The grounds of appeal and main points raised in the submission can be summarised as follows:

- The farm yard slurry tank is not impacting on groundwater quality and groundwater flow paths towards Tacumshin Lake.
- On the basis of the site specific evidence presented, there is no reasonable justification or requirement to proceed to a Stage 2 Appropriate Assessment.
- The recommendations made in the engineering and hydrogeological reports were precautionary measures only. They were not mitigation measures.
- The increase in nitrate at a sampling location does not point to a source of contamination at the farmyard and can be explained by other factors outlined in the hydrogeological report addendum.
- The appeal is accompanied by the following:
 - Letter from author of Appropriate Assessment Screening Report.
 - Hydrogeological and Engineering reports addendums.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority Response

This response can be summarised as follows:

- Both the Department of Arts, Heritage and Gaeltacht and the Wexford County Council Biodiversity Officer advised the applicant to proceed to a Stage 2 Appropriate Assessment. The Planning Authority is precluded from assessing a planning application for retention where a Stage 2 Appropriate Assessment is required.

6.2 First Party Response

A response has been submitted by the First party which can be summarised as follows:

- It is factually incorrect that both the Department of Arts, Heritage and Gaeltacht and the Wexford County Council Biodiversity Officer advised the applicant to proceed to a Stage 2 Appropriate Assessment.
- Parts of the DAHG submission are quoted to illustrate this.
- It is considered that a Stage 2 Appropriate Assessment is not required.

6.3 Observations

None.

7.0 POLICY CONTEXT

Wexford County Council Development Plan 2013-2019

- Section 6.4.6 deals with Agriculture.
- Section 10.6.6 Agricultural Waste.
- Section 14.2.2 deals with Natura 2000 sites.
- Site is identified as 'landscapes of greater sensitivity' in the Landscape Character Assessment.
- Policy relating to Landscape Character Assessment is set out in Section 14.4.2.

ASSESSMENT

Having examined the file and having visited the site I consider that the main issues in this case relate to:

1. Principle of Proposed Development
2. Appropriate Assessment

PRINCIPLE OF PROPOSED DEVELOPMENT

The subject site is located in a rural area in close proximity to Broadway, Co. Wexford.

It is considered that that agricultural development is permitted in principle at such rural locations and it is my opinion that such locations are generally, subject to good practice and management, the optimum location for agricultural developments. A farm has been established at this location for many years but it appears from the information on file that it was unauthorised and the applicant is now seeking to regularise the situation.

Having regard to the the established use of the site, and the location of the site in a rural area, I consider that the retention of the existing development would be acceptable in principle, subject to all other relevant planning considerations being satisfactorily addressed.

Appropriate Assessment

The application is accompanied by a document entitled Appropriate Assessment Screening Report. Appendix II of this report contains a Hydrological Assessment Report.

Five European sites occur within 2km of the farmyard as indicated in Figure 3 of the AA Screening Report. The screening report screens out four of the five sites from further consideration in the AA process.

The site is located within 250m of Tacumshin Lake cSAC (000709)/ Tacumshin Lake SPA (004092). The NPWS Site Synopses states that the site is of particular conservation significance for its lagoon, which is an excellent example of a sedimentary lagoon with a gravel/sand barrier and one of the largest in the country. Tacumshin Lake SPA is one of the most important ornithological sites in the

country with the occurrence of the Whopper Swan and Bewick's Swan of special note.

The potential for indirect impacts on Lagoon habitats that occur within Tacumshin Lake cSAC (000709)/ Tacumshin Lake SPA (004092) was identified in the screening report and site investigations were undertaken to assess the local hydrogeological/hydrological regime. The farm yard is located upstream from Tacumshin lake cSAC and SPA and the presence of a small stream nearby provides a pathway for potential impacts on water quality within the designated site. The stream discharges to the cSAC/ SPA c. 250m downstream of the farm yard. Similarly, groundwater provides a potential pathway for impacts on the water quality.

The investigations undertaken included the following:

Walkover Survey and desk study.

Excavation of 4 No. trial pits to assess subsoils lithology and groundwater conditions.

Installation of 2 shallow piezometers for measurement of groundwater levels and for groundwater sampling.

Short pumping test.

Surface water sampling of the nearby stream upstream and downstream of the farm yard.

Groundwater samples were taken from the existing farm well.

It was concluded that only two potential flow paths from the site to Tacumshin lake exist for possible farm yard related contamination as follows:

Farmyard runoff entering the local stream which then flows into Tacumshin Lake (surface water path only); and,

Potential leakage of effluent from the slurry tank/yard into the underlying aquifer which potentially discharges to Tacumshin Lake (groundwater flow path only). The investigations carried out as part of the report substantiate with site based scientific data that the site is not contributing to water quality issues and demonstrate that the development has no significant effects on the downstream designated site.

I note that report from the DoEHLG considered that the increase in nitrates on the stream sampling location SW3 was not accounted for in the hydrogeological report. The appeal response includes a Hydrogeological Addendum Report which states that nitrate was the only parameter to show a slight increase and this can be explained

by a number of potential causes such as temporal variations in water quality, other local inflows between the sampling points or minor laboratory inaccuracies. Also this level of nitrate at both sampling locations does not suggest a point source of contamination and is actually below the average nitrate level recorded for Wexford streams/ rivers in 2013. It is also noted that the significant decrease in concentrations of the key parameters (i.e BOD, ammonia, orthophosphate and phosphorus) downstream of the farm is evidence that the farm is not contributing to local surface water quality issues.

The hydrogeological assessment concludes that there is no groundwater pathway between the farm and the stream and therefore the only pathway is via surface water runoff, which is all well contained within the farm area and does not enter the stream. A separate report has been commissioned from an engineer regarding the slurry tank which concluded that the tank shows no signs of leakage by visual inspection. The hydrogeological assessment report considered that it was likely that the slurry tank base was underlain by up to a metre of low permeability clay which will act as a secondary barrier between the tank and the local groundwater table if any leakages do occur. Hydrogeological investigations carried out indicated no impact on groundwater quality in the area from the farmyard/ slurry tank.

I note that both the hydrogeological assessment and the report on the slurry tank include a number of recommendations such as sealing the joints in the slurry lagoon and the extension of the existing earthen berm adjacent to the stream on the site in order to completely isolate the wider farmyard drainage from the local stream. Section 2.2.2 of the appeal response is very clear in terms of stating that these are not presented as mitigation measures and are only made after the conclusions that no significant effects are presented. I have reread the conclusions of both reports and consider that this is indeed the case. Both of these measures are best practice recommendations for general improvements to environmental protection within the farmyard, but are not required as the risk of indirect contamination of ground/surface water is remote and there is no evidence of same from the investigations carried out. Should the Board be minded to grant retention permission, I consider that these measures are precautionary measures only to comply with best environmental practice and should be included as conditions. An addendum to the engineering report is submitted with the appeal response which notes that since the original report, the tank has been inspected empty and the joints are in good condition. Furthermore, comparing the inside of the empty tank below the high tide mark with the outside, there is no

trace of straining on the external face, confirming that the joints are impervious even to minute seepage.

The Appropriate Assessment Report submitted with the application concludes that the development has not impacted on the integrity of the European sites, in view of the conservation objectives of these sites. Based on this, it was concluded that there is no requirement to proceed to Stage II Appropriate Assessment. On the basis of information provided with the application and in particular the appropriate assessment, hydrogeological the engineering reports and the addendums to these reports submitted with the appeal documentation, I am satisfied with the above conclusion. It is therefore reasonable to conclude that, on the basis of the information available on the file, which I consider adequate in order to issue a screening determination, that the existing development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European sites and a stage 2 appropriate assessment is not required.

10.0 RECOMMENDATION

Reasons and Considerations

Having regard to the nature and extent of the development to be retained, to the history of onsite agricultural activity, to the existing character and pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development proposed to be retained would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would respect the existing character of the area and would be acceptable in terms of traffic safety and convenience. The development to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be retained in accordance with the plans and particulars lodged with the application.

Reason: In the interest of clarity.

2. The joints in the slurry tank shall be sealed in accordance with the details submitted in the engineering report submitted to the Planning Authority with the application within six months of the date of this order. This is a precautionary measure in accordance with best environmental practice.

Reason: In the interest of the proper planning and sustainable development of the area.

3. The existing earthen berm adjacent to the stream shall be extended along the full north western boundary of the site. This is a precautionary measure in accordance with best environmental practice.

Reason: In the interest of the proper planning and sustainable development of the area.

4. (a) All effluents and farmyard manure shall be managed and disposed of in strict accordance with the EU (Good Agricultural Practice for Protection of Waters) Regulations, 2014.

(b) Slurry shall not be spread on the lands during the period 15th October to 15th January inclusive, or during wet weather, or on frozen ground. Slurry spreading shall always be curtailed to the capacity of the land to retain, neutralize and assimilate the loading.

Reason: To prevent pollution and in the interest of the proper planning and sustainable development of the area.

5. (a) The developer is required to engage the services of a suitably qualified archaeologist to monitor all groundworks associated with the development. This will include the removal of any of the concrete slab to the north of the shed in order to ensure the recording of any archaeological material surviving below the concrete slab associated with Recorded Monument WX053-004 towerhouse.

(b) The developer shall provide arrangements, acceptable to the Planning Authority, for the recording and for removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matters shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

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

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

Emer Doyle
Inspector

12th October 2016