



An  
Bord  
Pleanála

## Inspector's Report PL20. 247923

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<b>Development</b>	Poultry facility for 76,000 broilers
<b>Location</b>	Corgullion, Carrick-on-Shannon, Co. Roscommon
<b>Planning Authority</b>	Roscommon County Council
<b>Planning Authority Reg. Ref.</b>	16/121
<b>Applicant</b>	Catherine O'Beirne
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	Third Party vs. Grant & First Party vs. Contribution
<b>Appellants</b>	Nathan Kitchen Catherine O'Beirne
<b>Observers</b>	David and Arlene Lavin
<b>Date of Site Inspection</b>	21 <sup>st</sup> March 2017
<b>Inspector</b>	Stephen J. O'Sullivan

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## **1.0 Site Location and Description**

1.1. The site is in a rural area in Co. Roscommon c5km south east of Carrick-on-Shannon and c900m south east of the Shannon. It has a stated area of 2.12ha, part of a larger landholding of 8.12ha. The land is undeveloped. Rushes predominate upon it. The site has c140m of frontage along a county road to the south-east. That road is straight, level and c5.4m wide. The boundary along it is marked by a ditch and a substantial hedgerow. There are ditches along the other site boundaries with intermittent hedges, and along a field boundary within the site. The landscape in the area is gently undulating and the ground on the site rises from east to west. There is no adjacent development on the county road along the front of the site. However the western side of the landholding adjoins another county road where sporadic housing occurs within 200m of the site.

## **2.0 Proposed Development**

- 2.1. It is proposed to provide a poultry rearing facility on the site. It would be contained in 2 houses with concrete walls and a metal roof. Each building would have a floor area of c2,010m<sup>2</sup> and a ridge height of 6m, and an attached boiler room. A feed silo 10m high would be erected, as would a storage building and fuel tanks.
- 2.2. The facility would have a capacity for 80,000 broilers. They would be delivered to the site when “days old” and kept for 7 weeks. They would be collected and delivered by the same company under contract with the operator. That company would also supply the feed. There would be approximately 6 batches per year, with a break of 2 weeks’ between them. The flooring would be chopped straw. The soiled litter would be removed at the end of each batch cycle and delivered to a named farmer in Co. Longford. The houses would be washed and the wash water drained to tanks.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant permission subject to 18 conditions.

Condition no. 2 required a revised site layout plan showing the location of soil deposition.

Condition no. 3 required the payment of €85,000 under the adopted development contribution scheme.

Condition no.5 required the implementation of the mitigation measures set out in the EIS submitted with the application and in the Noise Impact Assessment, Odour Impact Assessment and Odour Management Plan submitted to the planning authority as further information.

Condition no. 17 required a connection agreement from Irish Water for any services deemed necessary.

## **3.2. Planning Authority Reports**

### **3.2.1. On the initial application**

The report from the Environment Section stated that the information on various matters was incomplete. These included the surface water layout of the site; the disposal of spoil from construction; the disposal of dead stock; the disposal of litter in accordance with a nutrient management plan; the disposal of wash waters; chemicals to be stored on the site; noise; odour; and vermin control.

The report from the Roads Section recommended a grant of permission subject to the provision of an adequate access with sufficient sightlines.

The planning report on the initial application notes that a pre-application consultation took place with the applicant with regard to another site which was considered unsuitable. A summary of the EIS is given. Core policy 3.8 and section 3.4.1 of the development plan supports agricultural diversification and intensification, including poultry units. So the proposal is acceptable in principle. There are certain discrepancies in the submitted drawings. It was recommended that further information be sought regarding the operation of the proposed development, as advised by the Environment Section, and the provision of sightlines at the proposed access.

### **3.2.2. On the further information**

Environment Section recited requirements to be placed on the proposed development. Its report on the clarification of the further information referred to these requirements.

The planner's report on the further information stated that clarification was required regarding noise, construction spoil, wash water, odour and the submitted drawings. The report on the clarification stated adequate information had been submitted regarding noise, washwater, odour, landscaping, and the consistency of drawings. A grant of permission was recommended.

### **3.3. Third Party Observations**

Submissions were made to the planning authority that objected to the development on grounds similar to those raised in the subsequent third party appeal and the observations upon it.

## **4.0 Planning History**

There is no planning history on the site. The council planner's report refers to a refusal of permission for a house in the vicinity due to ground conditions not being suitable for a septic tank system under Reg. Ref. PD08/1384. The third party appeal mentioned such cases.

## **5.0 Policy Context**

### **5.1. Development Plan**

The Roscommon County Development Plan 2014-2020 applies. Section 3.4.1 of the plan refers to agriculture. Key Action 2 states that agricultural intensification will be encouraged, including poultry production, but that it is important that vital environmental qualities, including water quality, are protected. These aims are set out in objectives 3.3 to 3.9 of the plan.

## 5.2. Natural Heritage Designations

The site is not in or near any Natura 2000 site. The closest would be the Annaghmore Lough SAC c12.5km to the south-west. The Cloonen Bog SAC and the SPA and SAC at Lough Forbes are c14km to the south-east.

## 6.0 Third Party Appeal

### 6.1. Grounds of Appeal

The third party grounds of appeal can be summarised as follows-

- The site is frequently waterlogged. The road has poor alignment and soft verges and is unsuitable for the heavy goods traffic that the development would generate. There are 38 houses within 1km of the site and 5 within 400m. The Shannon is less than 1km to the north. The ground water in the area is of extreme or high vulnerability with a risk of contamination, according to the GSI. The applicant has no connection with the area and does not farm here. The manure would be spread on land c40km away. The proposed development is speculative on an industrial scale with no site specific need.
- While the development plan generally supports agriculture, it also protects water quality under objectives 3.3, 3.4, 3.7 and 3.9. The proposed development would be contrary to these objectives. There is inadequate land on the site to dispose of either manure or soiled washings from the development. The development could lead to pollution of groundwater or surface waters during periods of heavy rainfall or as a result of poor management practices. Single houses have been refused permission in the vicinity due to such concerns.
- The proposed development does not provide for renewable energy in line with section 3.2 of the development plan.
- The proposed development would not comply with the development management guidelines in chapter 9 of the development plan. It is being parachuted into a greenfield site. Such substantial structures should be located within an existing farm complex where the visual impact would be

minimal. The sightlines at the access extend over third party lands but no legal agreements to provide them have been submitted.

- The development will not contribute to the local economy. It will generate significant HGC movements on the local roads. The submitted EIS does not adequately address flora or fauna. The visual amenity of the area will be adversely affected. The proposed landscaping proposals are inappropriate for this area. There will be discernible changes in noise levels. It was recommended that a berm of 2.5m be installed, but one of only 1.5m is proposed.
- The proposed development requires an appropriate assessment due to its scale and nature. There is a variety of Natura 2000 sites within 15km. The board refused permission for a poultry house in Monaghan under PL18. 218658 because of concerns regarding pollution in cumulation with other similar developments in the vicinity.
- The EIS is inadequate. It refers to an existing agricultural unit on site which does not exist and states that the nearest house is 390m away when it is 190m. There is no evidence of a scoping exercise and the consideration of alternatives is inadequate. There was a failure to carry out a thorough assessment with regard to noise, odour, dust and visual impact. The odour impact study did not address local landscape features. There was a lack of information with respect to drainage or hydrology or the supply of water. There was no appropriate assessment and inadequate information on flora or fauna.
- There are 5 houses within 400m of the proposed intensive poultry unit, contrary to the EPA's advice

## 6.2. Applicant Response

- The applicant and her husband have extensive experience in the poultry industry, and lives 3km from the site. They are eager to commence poultry farming near their home and to have good relations with their neighbours. Other sites in the area were rejected on ground of site unsuitability, including 10.5ha of forestry. The application should not be described as speculative.



Not owning a farm should not preclude a person from re-entering the farming industry.

- Best practice would indicate that poultry rearing should not occur close to whether other intensive livestock rearing occurs due to the biosecurity threat from the transfer of bacterial infections. Bord Bia's Quality Assurance Scheme states that the site should be physically isolated to preclude the entry of other farm animals. So intensive agricultural development generally occurs on greenfield sites. The proposed development would contribute to the local economy by providing work for contractors and from investment by the operators. Any enterprise in a rural area will depend on the movement of staff and materials to and from its site.
- The previous definition of organic fertilizer as waste requiring disposal has been changed to one as a by-product, recognising it as an economically valuable resource that is becoming an essential part of the agricultural industry in Ireland, particularly poultry litter which is easily handled and high in nitrates. It is preferential for the proposed site to be located adjacent to a sufficient landbank for the spreading of washwaters.
- The proposed development does not involve the disposal of foul effluent to groundwater, so the previous refusals of permission for houses dependent on such disposal to groundwater that were cited in the appeal are not relevant to the current case. The majority of the litter would be solid material. It would be loaded on a concrete yard that would drain to a silt trap and by-pass interceptor thence to a percolation area or soakpit. Wash water from within the poultry houses would be directed to storage tanks that would be emptied every 6 weeks. Drainage from the yard could be diverted to the tanks if the event of an unforeseen spillage. The site is not within a source protection area.
- The applicant does not consider the site to be unsuitable or prone to flooding. While the soil itself has poor drainage, a good drainage infrastructure of open drains has been provided. The buildings and washwater tanks would be of a standard design that has proven itself on many other farms. The washwater is a low risk material that would comply with the definition in the Nitrates

Regulations as having a BOD not exceeding 2,500mg per litre or dry matter content above 1%. The construction and operation of the proposed development would be governed by an IED licence. Two IED licences have been granted in the area for piggeries.

- The site is not within or close to a Natura 2000 site. The planning authority decided that the proposed development was not likely to have any significant effect on a Natura 2000 site and that an appropriate assessment was not required.
- The manure from the development would be handled in accordance with the Nitrates Regulations SI 2014/31 which would ensure that would only be applied to lands that have a demonstrated nutrient requirement established by its annual Nutrient Management Plan. Luke Brennan of Lanesboro has confirmed that all litter would be collected and applied to his tillage lands in accordance with such a plan. The supply of manure to other farmers is an established and common practice in the modern agriculture and food industry. There is an interim arrangement with a contractor for the removal of washwater from the tanks pending investigations as to whether the site could accommodate spreading of washwater upon it.
- The development would generate an average of 12 lorries a week that could be safely accommodated on the road network in the area.
- Hedges on the site would be retained to the greatest extent possible and additional planting would be carried out, after which the development would be less visible than other agricultural structures in the locality. The planting would improve the available habitats for wildlife.
- The scale of the proposal would be typical for this type of development. While the EPA BATNEEC guidance recommends a setback of 400m from houses this cannot always be achieved in the real world given the proliferation of one-off housing. the assessment of the likely impacts of the development, particularly with regard to odour and noise, found that it would have no significant effects on local houses during operation, subject to the implementation of mitigation measures. These measures could include the erection of additional noise barriers. The odour assessment methodology

follows the international standard and the EPA guidance from 2002. The assessment took into account local topography. Plume modelling and data from monitoring of other sites indicated that the impact off site would be within guidance limits.

- If a well cannot yield sufficient water for the development, condition no. 17 of the planning authority's decision would require a connection from Irish Water.
- The primary source for heating fuel would be biomass.
- The development would comply with the provisions of the development plan.
- Any omissions from the EIS were addressed by the submission of further information to the planning authority.

### 6.3. **Planning Authority Response**

The planning authority's response did not refer to the grounds of the third party appeal.

### 6.4. **Observations**

- 6.4.1. The observations of the EPA were sought. The EPA made a submission which confirmed that the proposed development would require an IE licence to operate as it would involve a specified activity listed in the first schedule to the Environmental Protection Agency Act 1992, as amended, under Class 6.1. It stated that the agency has not received a licence application relating to the proposed development. Were the agency to grant a licence then it would incorporate conditions to ensure that appropriate national and EU standards are applied and that Best Available Techniques are used in the carrying on of the activities. The observation referred to the Commission Implementing Decision (EU) 2017/302 of 15<sup>th</sup> February 2017 establishing best available techniques for the intensive rearing of poultry and pigs. Should an IE application be received it would define the site boundary which in most cases only relates to the site of the poultry rearing and directly associated activity. Activities beyond the site boundary, including the use of organic fertiliser as fertiliser beyond the site boundary, cannot be controlled by an IE licence. The recipient of organic fertiliser is responsible for its management and use in accordance with the

EU (Good Agricultural Practice for the Protection of Waters) Regulations 2014 and the Animal By-Products Regulations EC20169/2009.

6.4.2. The observation from the HSE can be summarised as follows-

- The EIS does not have sufficient information on the quality of groundwater
- A chemical toilet is not sufficient for the development. A connection to mains sewerage or a septic tank system should be proposed.
- The disposal of veterinary waste is not addressed in the EIS.
- The waste bins for dead stock need to be emptied every week.
- The adequacy of the “2,500 gallon” tanks to provide 6 months storage has not been demonstrated.
- The nutrient management plan for the land on which litter would be disposed does not address restrictions on spreading there during the winter.
- The EIS does not consider nuisance arising from the transport of litter, wastewater or dead stock.

6.4.3. The observation from David and Arlene Lavin repeated the submission made to the planning authority that objected to the development on the following grounds-

- The observers own a holiday home in the area. Mr Lavin was originally from Jamestown and is familiar with the area and its bogs. The bog on the site is scenic and has an abundance of wildlife. The proposed development would be unsightly.
- The road is too narrow for trucks and machinery.
- The observers are concerned about pollution and vermin.

## 6.5. Further Responses

6.5.1. The planning authority submitted a response to the observation from the HSE which stated that it had no further comments.

6.5.2. The applicant submitted a response to the observation from the HSE. It stated that water from the well on the site would not be used for human consumption. Additional time was required to collect the information which it sought on water

quality. A proposed method for a baseline groundwater assessment is submitted. This can be carried out before construction commences. A wash hand basin would be provided with hot water as part of disease control measures. It would result in a minor additional load on the onsite water tanks. It would not change the composition of the wash water or render it less suitable for landspreading. A contractor would collect the wash waters from the site until the site investigations on the adjacent 20ha landbank are completed. Any landspreading would be regulated under the Nitrates Directive. The applicant does not intend to employ staff at this location and a plumbed toilet is not necessary there. Similar facilities were provided to serve authorised poultry houses in Co. Monaghan. Medication would be administered to the birds through the automated water system. There would be no sharps and the empty bottles would be returned by the vet. Dead stock would be removed from the bins by College Proteins once a week. The odour management plan includes weekly inspections. The wash water tanks would have adequate storage for 6 months and four batches. The nitrates regulations require storage capacity of 18 weeks for spreading in Co. Longford. Three batches could be raised in the proposed development within that period each generating c75 tonnes of litter. During the period closed for spreading it would be stored on Mr Brennan's farm on a litter pad with capacity to store 470m<sup>3</sup> of material. This would be sufficient for 18 weeks storage. Rainwater effluent from the pad would be drained to an adjacent storage tank with a capacity of c200m<sup>3</sup>. If the weather is poor and prevents collection of litter then the onsite storage shed would be used. It would have a storage capacity of 326m<sup>3</sup>. A setback of 400m from houses cannot always be achieved in the real world. The odour and noise surveys found that, given appropriate mitigation, the development would not significantly impact on local residences. The operation of the development would be subject to licensing and control by the EPA. Lorries removing litter would be covered. Animal collection vehicles would be sealed. All contractors used for the collection and transport of materials would be suitably registered and permitted. A copy of permits and licences would be maintained at the site.

- 6.5.3. The third party appellant submitted a response to the observation from the HSE. It stated that the observation demonstrated the inadequacy of the EIS and raised issues with the thoroughness of the planning authority's approach. The applicant has not provided adequate information regarding groundwater and wastewater.

There would appear to be inadequate storage for poultry waste and adverse weather conditions have not been considered in the context of its spreading on land.

## **7.0 First party appeal**

### **7.1. Grounds of appeal**

The applicant is appealing against the application of the terms of the development contribution scheme in condition no. 2 of the planning authority's decision which required payment of €85,000. This figure was based on the rate of €20 per m<sup>2</sup> that the scheme applies to industrial/commercial development. The proposed development is agricultural because it would accommodate poultry raised for food, so the applicable rate would be €0 for 750m<sup>2</sup>, €2.50 for the next 250m<sup>2</sup> and €5 for every additional m<sup>2</sup> yielding a contribution of €21,250. The adopted scheme does not define agriculture, but the definition in section 2 of the act includes the keeping of any creature for food. The planning authority sent an email to a local deputy stating that the scale of the development made it commercial. This argument that the scale of a development changes its use is not logical. The rate for agricultural development in the scheme already refers to its size. If the development is regarded as commercial, then it could be used for retail or services without a further grant of permission.

### **7.2. Planning Authority Response**

The planning authority's response states that the development would come within the definition of commercial development in its contribution scheme as it would be a stand-alone venture not connected with existing agricultural activity in the vicinity on lands that the operator does not currently own. The chickens would be reared on a short cycle of 7 weeks, with supply and collection by a separate company. The development is therefore intended to be operated for reward of services to the operator and so falls within the category of commercial development in the adopted scheme. It may have been remiss not to provide a definition of agricultural development in the scheme. However the intention was that the lower rate would apply to mainstream farming where structures were required to support agricultural

practices carried out on the overall landholding. Minutes of a council meeting are submitted to support this contention.

### **7.3. Further responses**

- 7.3.1. The third party appellant responded to the first party appeal stating that the planning authority's classification of the development as commercial supports his argument that it is speculative development that is unsuited to this rural area.
- 7.3.2. The applicant submitted a response to the planning authority's response to her first party appeal. It states that the planning authority's position that an agricultural development has to be related to an existing agricultural development before it can be classified as agricultural does not make sense. On that basis a cattle farmer who specialized in cattle and nothing else would be operating a commercial and not an agricultural development. Neither does it make any sense to classify the development on the basis the applicant is purchasing the land as the application could have been made by its current owner. The operation is clearly agricultural as it concerns the raising of livestock for food. All agricultural activity is carried out for reward. Raising of poultry is not a service. The intent of the current scheme to recover contributions from agricultural development such as that now proposed is achieved by the imposition of the rate of €5 per m<sup>2</sup>.

## **8.0 Environmental Impact Assessment**

### **8.1. Human Beings**

The further information submitted to the planning authority included a noise impact assessment report. It noted that the nearest sensitive property, a house, would be 220m away. Potential noise impacts would arise during construction. They could be controlled by standard mitigation measures for building works and good construction practice. The use of machinery and vehicles during operation would generate noise similar to that arising from the established agricultural activities. It would not give rise to any significant effect on the existing noise profile of the area. The ventilation system for the poultry houses would not normally be audible at the nearest sensitive receptor. The information submitted in this regard is considered to be reliable. It is

not considered that the noise from the proposed development would have a significant adverse effect on human beings, provided that the short term impacts arising during construction were properly managed by standard techniques. There would also be a potential impact on human beings during operation from odour. This is addressed in section 8.5 below.

## 8.2. **Flora and Fauna**

The site occupies agricultural land. It is not within or close to any area designated for the protection of natural heritage. Livestock would be transported to and from the site in closed containers, with special procedures specified for the storage and removal of dead animals. Effluent from the washwater tanks would not be released on site, and manure would be removed to a remoted location for landspreading. In these circumstances it can be concluded that the proposed development would not have a direct effect on flora and fauna on or near the site during its construction or operation. However there remains a potential for the development to have a significant indirect effect on flora and fauna either at or downstream of the location where the manure from the proposed poultry houses would be spread. This would arise from the potential impact of spreading on water quality and aquatic habitats. As discussed at section 8.4 below, such a potentially significant indirect effect cannot be assessed in the course of the current application, which hinders the completion of an adequate EIA for the proposed development.

## 8.3. **Soil**

The clarification of further information submitted to the planning authority outlined the handling of soil during construction, with excavations of c4,400m<sup>3</sup> used to create mounds on the site that would mitigate the visual impact of the poultry houses. The information submitted is sufficient to demonstrate that the proposed development would not be likely to have a significant effect on soil. The proposed measures would also be sufficient to avoid the likelihood of the development being subject to flooding or that it would exacerbate flooding on other lands.



#### 8.4. Water

The proposed development would generate manure that would have the potential to have significant effects on the quality of waters due to its volume and organic content. The EIS states that wood shavings would be spread on the floor of the poultry houses to collect the manure. After each batch of chickens is removed, the resulting litter would be removed for landspreading on a named tillage farm at a remote location in Co. Longford. The further information and subsequent submissions from the applicant clarified that this spreading would be governed by the nutrient management plan for that farm and so would be subject to the requirements of SI/31 of 2014, as amended. After the removal of the litter the floor of the poultry houses would be washed, with the washwaters drained to tanks on the site. The applicant has proposed that the effluent in these tanks could be removed by a contractor or spread on the 20ha landholding on which the site lies. The applicant's response to the HSE's submission states that removal by contractor is proposed pending a baseline assessment of water quality around the site. The proposed approach to the management of manure from the development is rational and might be acceptable for a smaller project. However it raises difficulties in the context of EIA. The scale of the development is clearly above the threshold set in class 1(e)(i) of part 2 of Schedule 5 of the planning regulations. It is therefore obligatory for an environmental impact assessment of the proposed development to be completed before a grant of permission is considered. The assessment must identify, describe and assess the direct and indirect effects of the project on various factors, including water. The project could have a significant indirect effect on the quality of waters in the vicinity or downstream of the place where the litter would be spread. However information has not been made available concerning the existing environment at that location to enable this indirect effect to be described or assessed in the course of this application. This would be a lacuna in the EIA. The requirement to assess any significant effect before to consent is given for a project is an integral part of the EIA process, so this lacuna cannot be remedied by assuming compliance after planning consent with a regulatory code such as that established for landspreading under SI34 of 2014 or the conditions of an IE licence. Indeed the EPA has observed that such activity outside the site would not be subject to control under an IE licence. Furthermore landspreading at a location remote from the site on

another landholding would not be part of the development that would be authorised by a grant of permission on foot of this application. Therefore any measures proposed to mitigate the adverse effects that might arise from it would not be an integral part of the development. Nor would they be subject to any conditions that might be attached to a permission. So effective measures to mitigate the potential impact on waters from the landspreading required by the proposed development could not be proposed or required in the course of this application. Similar concerns arise with regard to the disposal of washwater. However the organic content of the washwater would be less, so its indirect effect on the water to which it might discharge is also less than that which might arise from the spreading of the manure removed from the site.

The proposal for the manure to be spread at a remote site also runs counter to certain provisions of the BATNEEC Guidance Note for the Poultry Production Sector issued by the EPA in 1996. Section 4.3 of that note refers to the siting of poultry units. It states that it should follow a hierarchy in which the first factor is a mass balance of nutrients within a control area. The location of the development proposed in this case would require the nutrients in the manure which it generated to be transported to another area. Section 4.6 of the note refers to spreading poultry manure. It states that the owner of a poultry unit is responsible for the management of the manure and the washwater that is produced. Where landspreading areas are obtained by agreement with other landowners, the unit should have a reserve landspreading area available to it of at least 50% of that obtained by agreement. The proposed development does not provide for such a reserve area. Similar provisions appear in the Commission Implementing Decision (EU) 2017/302 of 15th February 2017 establishing best available techniques for the intensive rearing of poultry and pigs, where BAT2.a refers *inter alia* to the proper location of plant/farm and spatial arrangements to reduce transport of materials including manure, and BAT20.a refers *inter alia* to the assessment of the land receiving the manure. The applicant argued that ownership of a farm should not be a prerequisite to engaging in poultry production. However the requirements of EIA legislation and the guidance note from the EPA imply that carrying out such a development at the scale currently proposed would require control over a substantial amount of land.

## 8.5. Air

The activity within the development would have the potential to effect air quality due to odour. An assessment report and an odour management plan were submitted to the planning authority as further information. The assessment identified the source of the potential odour as ammonia emitted from the manure that would be expelled through the ventilation system from the poultry houses, and also during the removal of litter from them. It calculates that the resulting odour concentrations on the site's boundaries would be at or below the threshold  $3.00\text{O}_u/\text{m}^3$  at the 98<sup>th</sup> percentile specified by the EPA. The calculations were based on the proposed stocking level, standard emissions rates from Dutch legislation and a dispersal model based on the climate recorded at the nearest Met Éireann station. The assessment was competently carried out using appropriate models and empirical data and its conclusions are considered reliable. An odour management plan was submitted to demonstrate that the measures which would be implemented to control the emissions of odour would be carried out. These include maintenance and cleaning schedules and the use of closed vehicles for the transport of litter and livestock. This information is adequate to demonstrate that the proposed development would not be likely to have a significant adverse effect on air quality through the emission of odours or otherwise.

## 8.6. Climate

The proposed development would not be likely to have a significant effect on climate. It is noted that the applicant proposes to use a renewable energy source, biomass, to generate the energy needed for the poultry houses.

## 8.7. Landscape

The area has an attractive rural character with an undulating topography with hedges separating fields under pasture of varying agricultural quality. The landscape is not especially scenic or particularly sensitive. The proposed development would introduce substantial structures into it. Even with the proposed mounds and planting, it would have a pronounced impact on views in its immediate vicinity. However the appearance of those structures would be agricultural and so they would

be in keeping with the established landuse character of the area. Their visual impact would be restricted to the vicinity of the site, given the generally flat topography of the area. In these circumstances the development would not give rise to significant adverse effects on the landscape.

#### **8.8. Material Assets**

The width, alignment and condition of the road serving the site are such that it would be sufficient to safely carry the traffic that would be generated by the proposed development. Adequate sightlines can be provided at the access to that road without removing an excessive length of the existing hedgerow or that works outside the landholding. The proposed development would not, therefore, injure the safety or convenience of road users by reason of traffic hazard. It would not be likely to have a significant effect on the material asset which the local road network comprises or upon other material assets.

#### **8.9. Cultural Heritage**

The site does not contain any features that are recorded or protected due to their significance with regard to archaeology or architecture. Nor does it form the setting for any such feature. Therefore the proposed development is not likely to have a significant effect on cultural heritage.

#### **8.10. Interaction of the foregoing**

The potential impact of the proposed development on human beings derives largely from its impact on air quality. An assessment of its impact on flora and fauna depends upon its impact on water quality, both directly and indirectly.

#### **8.11. Adequacy of the EIS**

There were important omissions from the submitted EIS. It did not provide sufficient information to allow an assessment of the likely effects of the proposed development on water, air or human beings. It did not provide baseline information on the site and its environmental characteristics. Certain statements within it were inaccurate, including those relating to the levels on the site, its proximity to houses and the

possibility of access from existing development. Its non-technical summary did not provide a summary of the information required in an EIS, being merely a description of the development. Several of these deficiencies were remedied by the subsequent submissions in the course of the application and appeal, in particular the noise and odour impact assessments submitted to the planning authority which adequately addressed impacts on human beings and air quality. However adequate information has still not been provided regarding the likely impact on water, particularly the indirect effects arising from the landspreading of manure at a remote location. The information that has been submitted with regard to the likely effects on the environment is contained in many different documents including the further information and clarification thereof submitted to the planning authority, the response to the third party appeal and the response to the observation from the HSE. There is no document providing coherent and comprehensive information on the likely effects of the proposed development on the environment. This inhibits the opportunity for members of the public to comment upon the development and participate in the EIA process in the manner envisaged by articles 6.2 and 11 of the EIA directive in force when the application was made. The absence of an adequate non-technical summary of the EIS therefore remains a material omission.

## **9.0 Appropriate Assessment**

The appeal site is not in or near any Natura 2000 site. The hydrological connection with the nearest downstream sites at Cloneen Bog and Lough Forbes is along the Shannon. Given the separation distance from those sites and the extent of the catchment area and volume of flow in the Shannon between them, it is not likely that the works or proposed activity on the appeal site could have significant effects on them or on any other Natura 2000 site. However the absence of adequate information to assess the indirect effects of the development on water quality arising from landspreading at a remote location means that the likelihood of significant effects on a Nature 2000 site arising from the development cannot be excluded. So a screening for appropriate assessment cannot be completed in respect of this application.

## 10.0 Assessment of other issues

- 10.1. The proposed development would be used to raise animals for food. It would therefore be agricultural. This is consistent with the definition of agriculture provided in section 2 of the planning act. As such its rural location would be in keeping with the provisions of the development plan and the proper planning and sustainable development of the area. It is noted that the poultry houses would not maintain a 400m separation distance from all houses as recommended in section 4.3 of the EPA's BATNEEC Guidance Note. However the applicant's argument that this separation distance would not always be practicable in the Irish context of widespread one-off housing is accepted. The site is not in a developed area and it achieves a reasonable separation distance from the houses that are located there,
- 10.2. 'Agricultural' and 'commercial' are not exclusive categories. Most agricultural activity is carried out on a commercial basis. The proposed development would be used to raise livestock to provide food. The appropriate rate for the calculation of the levy under the adopted contribution scheme is therefore the one for agricultural development. The grounds of the first party appeal are accepted in this regard. If the board grants permission, a levy of €21,250 should be required to fulfil the terms of the contribution scheme. The position of the planning authority on the matter is understandable, as the activity that would be carried out in the proposed poultry houses would not involve using any of the natural resources that occur on the site or in its immediate vicinity. However the terms of the scheme do not remove this type of livestock rearing from the category to which the agricultural rate would apply. Even if there were ambiguity on the matter, because the contribution scheme was drafted by the planning authority and it imposes a financial obligation on a private person, the ambiguity would have to be resolved in favour of the applicant.

## 11.0 Recommendation

- 11.1. I recommend that permission be refused for the reasons and consideration set out below.

## 12.0 Reasons and Considerations

The proposed development would generate significant quantities of manure the disposal of which have the potential to have a significant effect on the quality of waters. Adequate information is not available to complete an environmental impact assessment or an appropriate assessment of this likely significant effect on the environment by virtue of the proposal to spread the manure generated by the proposed development on land that is remote from the appeal site. This proposal would also be contrary to the advice given regarding the siting of poultry units at section 4.3 of the *BATNEEC Guidance Note for the Poultry Production Section* issued by the EPA in 1996 which seeks to maintain a nutrient balance within a control area, and the advice at section 4.6 of the note that, in cases where the normal spreading area is obtained by agreement from another landowner, the owners of units should maintain a reserve spreading area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Stephen J. O'Sullivan  
Planning Inspector

18<sup>th</sup> July 2017