



An
Bord
Pleanála

Inspector's Report PL08.248436

Development	Construct a storage unit for tree surgeon services vehicles and related machinery, retain hard stand / yard and access road and all ancillary site works.
Location	Ballyfinnane, Firies, Killarney, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	16/1288
Applicant(s)	Richard Sheridan
Type of Application	Permission & Permission for Retention
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	Michael Horgan
Observer(s)	None.
Date of Site Inspection	31 st July, 2017
Inspector	Robert Speer

1.0 Site Location and Description

The proposed development site is located in the rural townland of Ballyfinnane, Co. Kerry, approximately 3.3km northwest of the village of Firies and 300m southeast of the crossroads in the centre of the village proper of Ballyfinnane, where it occupies a roadside position to the immediate east of Local Road No. L2019 which extends between Ballyfinnane Cross and Firies. The surrounding area can be described as comprising generally flat marginal farmland which falls gently towards the River Maine to the south / southeast whilst the land uses in the immediate vicinity of the site are predominantly agricultural in nature. The site itself has a stated site area of 2.0 hectares, is irregularly shaped and primarily comprises an area of poor quality grazing land / marginal rough wet pasture, save for the north-eastern corner of the site which has been stripped of topsoil in order to provide for an area of hardstanding that is accessed from the public road via a newly developed track extending along the southern and eastern perimeter of the site. Notably, the western and southern extents of this area of hardstanding are defined by a substantial screening berm which would appear to have been formed from the topsoil excavated from within the adjacent lands. Notwithstanding the presence of significant open drainage ditches along the northern, western and southern site boundaries, in addition to a watercourse / stream which flows southwards alongside the eastern site boundary towards the River Maine, the subject lands would appear to suffer from poor overall ground conditions / drainage characteristics given the extensive growth of rushes and yellow flag (iris) vegetation throughout the wider site area. The property is also bounded by the public road to the west and by a combination of mature hedgerows and tree stands.

2.0 Proposed Development

The proposed development involves the retention of an existing area of hardstanding situated within the north-eastern corner of the site and an associated access road / trackway that extends along the southern and eastern perimeter of the site area (both of which have been surfaced in loose hardcore / chippings). The proposal also provides for the construction of an open span shed with a stated floor area of 625m² and a ridge height of 7.5m which is to be used for the secure storage of vehicles and

other machinery associated with the applicant's business as a tree surgeon / arboriculturist. The overall design of the proposed shed is based on a simple rectangular plan with an apex roof and will utilise rising concrete walls with profiled metal cladding over same.

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of a response to a request for further information, on 10th April, 2017 the Planning Authority issued a notification of a decision to grant permission & permission for retention for the proposed development subject to 11 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Refers to the submitted plans and particulars.

Condition No. 3 - Requires the payment of a development contribution in the amount of €2,675 towards community infrastructure, environmental amenities and facilities benefitting the development.

Condition No. 4 - Requires the payment of a development contribution in the amount of €1,560 towards roads infrastructure benefitting the development.

Condition No. 5 – Refers to external finishes.

Condition No. 6 – Requires the finished floor level to accord with the Site Section Drawing received by the Planning Authority on 22nd December, 2016.

Condition No. 7 – Refers to the construction of the site entrance etc.

Condition No. 8 – Refers to surface water drainage.

Condition No. 9 – Requires any external lighting to be cowled and directed away from the public roadway whilst any such lighting is not to be visible from any point in excess of 100m away from the light.

Condition No. 10 – Refers to landscaping of the site.

Condition No. 11 – States that the proposed unit is to be used solely for the storage of the applicant's tree surgeon services vehicles etc. and not for any other commercial or agricultural purpose.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

An initial report recommended that further information be sought in respect of a number of items, including a requirement to submit an archaeological impact assessment, a rationale for the site selection, and the applicant's proposals (if any) for the future development of the wider site area.

Following the receipt of a response to a request for further information, a further report was prepared which referenced the site location in a 'Rural General' area and the siting of the development on low-lying lands in a position set back from the public road that would be screened with new planting. It also noted that the sightlines available at the site entrance onto the public road were adequate and that no issues arose in relation to foul and surface water drainage. Similarly, there were no concerns with regard to residential amenity. The report subsequently concluded by stating that, having regard to the nature, extent and location of the proposed development, the subject proposal would not be visually obtrusive, would not seriously injure the amenities of the area, and would not be contrary to the proper planning and sustainable development of the area, before recommending a grant of permission, subject to certain conditions.

3.2.2. Other Technical Reports

County Archaeologist: An initial report stated that there were no recorded monuments in proximity to the proposed development, however, given the scale of the proposal it was recommended that pre-development archaeological testing should be undertaken across the site and a full report on same submitted prior to any grant of permission. Accordingly, following consideration of an Archaeological Impact Assessment submitted in response to a request for further information, a final report was prepared which stated that no further mitigation was required.

Fire Authority / Building Control Officer: No objection.

3.3. Prescribed Bodies

Kerry National Roads Design Office: States that the application site is not located on a National Road and thus it had no observations in relation to the proposed development.

3.4. Third Party Observations

A single submission was received from the appellant and the principle grounds of objection contained therein can be summarised as follows:

- Detrimental impact on wildlife considerations, including damage to habitat suitable for the nesting of curlew and snipe.
- The proposed development site is located on a floodplain.
- The site drains to the River Maine which ultimately flows into the Castlemaine Harbour Special Area of Conservation.
- Detrimental impact on the visual and scenic amenity of the surrounding area.
- Increased traffic volumes and the associated undermining of the carrying capacity of the surrounding road network.
- Concerns with regard to urban sprawl and transport-related greenhouse gas emissions.
- The planning history of the application site.
- Errors as regards the technical and administrative validation of the planning application.
- The absence of any toilet facilities / wastewater treatment system on site.
- The availability of alternative industrial sites in Tralee.

4.0 Planning History

On Site:

PA Ref. No. 01906. Was refused on 16th July, 2001 refusing Donal O'Sullivan permission to construct 7 No. houses with wastewater disposal unit and access roads.

PA Ref. No. 04564. Was granted on 8th July 2004 permitting Michael Horgan outline permission to construct (1) 8 No. dwelling houses c/w individual Bioclear treatment plants (2) service road and ancillary site works.

PA Ref. No. 044495 / ABP Ref. No. PL08.212284. Was refused on appeal on 21st September, 2005 refusing Matra Construction Ltd. permission to construct 7 No. private dwelling houses and an individual treatment unit for the following reasons:

- Having regard to the soil conditions and high water table on the site and to the proximity of the proposed wastewater treatment unit and percolation area to the watercourse along the eastern boundary, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily by means of the proposed wastewater treatment system and raised percolation area. The proposed development would, therefore, be prejudicial to public health and constitute an unacceptable risk of pollution to the adjoining watercourse.
- The site of the proposed development is located at a distance from the existing settlement of Ballyfinnane, along a narrow road, lacking any provision for pedestrians. In the absence of any local plan for the settlement and its environs, it is considered that the proposed development would constitute disorderly, suburban type expansion of Ballyfinnane, contrary to the proper planning and sustainable development of the area.

PA Ref. No. 062917 / ABP Ref. No. PL08. 220899. Was refused on appeal on 13th June, 2007 refusing Matra Construction permission consequent on a grant of outline permission (planning register reference number 564/04) for the construction of 5 No. traditional style dwelling houses all served by a common sewage treatment plant and percolation area, a service road serving all dwellings, and all associated site works, for the following reasons:

- It is considered that details of the proposed development submitted for permission consequent differ materially from the terms of the outline permission on the site granted by Kerry County Council on the 8th day of July, 2004, under planning register reference number 564/04, and, in particular, conditions numbers 3, 6, 11 and 14 of the outline permission. The Board is, therefore, precluded from granting permission consequent for the proposed development.
- Having regard to the soil conditions and high water table and, in particular, to test results and evidence on site inspection, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would represent an unacceptable risk of pollution to surface water and would, therefore, be prejudicial to public health.
- Having regard to the plans and drawings submitted, it is considered that the proposed dwellings do not reflect a traditional design and would contravene condition number 6 of the outline permission (planning register reference number 564/04). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Ref. No. 072817 / ABP Ref. No. PL08.228872. Was refused on appeal on 18th December, 2008 refusing Matra Construction permission consequent on the grant of outline permission for the erection of five number traditional style dwelling houses, all served by a common sewage treatment plant and percolation area, a service road serving all dwellings, and to include all associated site works, for the following reasons:

- It is considered that details of the proposed development submitted for permission consequent differ materially from the terms of outline permission granted on the site by Kerry County Council on the 8th day of July, 2004, under planning register reference number 564/04, and in particular condition number 3 and the significant alteration to the site boundary. The Board is, therefore, precluded from granting permission consequent for the proposed development.

- Having regard to the soil conditions and test results, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and appeal, that the site can be drained satisfactorily by means of the communal treatment system proposed, notwithstanding the proposed use of a proprietary wastewater treatment system linked to a constructed wetland and a raised bed polishing-filter. The proposed development would represent an unacceptable risk of pollution to ground and/or surface water and would, therefore, be prejudicial to public health.

PA Ref. No. 073034. Was refused on 14th September, 2007 refusing Matra Construction permission to construct 5 No. traditional style dwelling houses all served by a common sewage treatment plant and percolation area, a service road serving all dwellings, and to include all associated site works, for the following reasons:

- The proposed development, located outside the development boundary of Ballyfinnane Village, would be contrary to the objectives of the Planning Authority as set out in the current Kerry County Development Plan, of encouraging the siting of new houses in urban areas and discouraging scattered housing development in rural areas. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- The proposed development and the precedent which a grant of permission would set for similar type development outside lands zoned for residential development, in conjunction with existing and permitted development in the vicinity, would constitute an excessive density of development in a relatively rural area where there are no public sewage facilities and the intensification of such a pattern would hence be contrary to the proper planning and development of the area.

5.0 Policy Context

5.1. **Kerry County Development Plan, 2015-2021:**

Chapter 4: Economic Development & Employment:

Section 4.5: *District Towns and Villages:*

ES-21: Support the sustainable strategies for economic growth as set out in current local area plans for towns and villages and any subsequent updates/ reviews

Section 4.8: *Rural Economy:*

ES-25: Consider a substantive and sustainable proposal for a small rural industrial, business enterprise or a community led enterprise scheme on land zoned Rural General, where it is demonstrated that there is no suitable site within any settlement in the locality and the proposal would benefit the local economy or would contribute to community regeneration. An application under this policy must be accompanied by evidence to support the case of economic benefit to the local economy and detailed information on the search conducted to secure a suitable site within the boundary of the local settlement(s). In addition proposals will be required to comply with the objectives and development standards of this Plan and specifically with the provisions of Objective ES-28.

ES-28: Proposals for any economic development in rural areas must demonstrate:-

- Compliance with the development standards of this Plan.
- That there will be no adverse impact on the residential amenity of nearby residents, particularly in relation to noise, traffic, air quality odours or vermin.
- That there will be no significant adverse effects on the environment including the integrity of Natura 2000 network.
- That there is existing or programmed capacity in the water infrastructure (supply and/or effluent disposal) or suitable developer-led improvements can be identified, delivered and maintained.

- The proposal shall include sustainable waste management practices both at the construction and operation stages of the proposal.
- The proposal will not compromise water quality nor the programme of measures contained within the South Western or Shannon River Basin Management Plans 2009-2015 (or subsequent updates).
- That the existing road network can safely handle any extra vehicular traffic movements generated by the proposed development or suitable developer funded improvements are identified and delivered to overcome any road related issues.
- Adequate access arrangements, parking, manoeuvring and servicing areas in line with standards set out in the Development Management, Standards and Guidelines section of this Plan or as otherwise agreed in writing with the Planning Authority.
- Compliance, where appropriate, with the measures contained in the Plan as they relate to biodiversity protection and enhancement.
- Appropriate boundary treatment and means of enclosure are provided and that any areas of outside storage proposed are adequately screened from public view.
- All measures are taken to assist integration into the landscape. As part of this the use of signage should be kept to a minimum.
- Any retail element to a proposed development under this policy must be clearly ancillary to the primary industrial/business use.
- Support the provision of on-farm tourism enterprises such as the renovation of farm buildings for tourism purposes, walking, cycling, angling, pony trekking and bird watching, subject to compliance with normal Planning and environment criteria and the Development Management standards as set out in Chapter 13 of this Plan.

Section 4.11: *Environment:*

ES-36: Ensure that proposals for new industrial/commercial developments, extension or refurbishment of an existing development, maximise clean technology, waste minimisation and energy and water conservation in their design and operational practices. Any proposal shall demonstrate compliance with objective ES-11 and all other objectives and Development Management, Standards and Guidelines of this Plan

Chapter 12: Zoning & Landscape:

Section 12.1: *Introduction: Landscape Protection:*

ZL-1: Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

Section 12.3: *Zoning:*

Section 12.3.1: *Zoning Designations: Rural General:*

Rural landscapes within this designation generally have a higher capacity to absorb development than the previous rural designations. It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Proposed developments in areas zoned Rural General, should in their designs take account of the topography, vegetation, existing boundaries and features of the area as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009). Permission will not be granted for development which cannot be integrated into its surroundings.

N.B. The proposed development site is located in an area which has been designated as 'Rural General' on Map No. 12.1(f) of the Development Plan.

Chapter 13: Development Management – Standards & Guidelines:

Section 13.2: *Development Standards / General*

Section 13.10: *Industrial and Commercial Developments*

Tralee / Killarney HUB Functional Area Local Area Plan, 2013-2019:

Section 1: *Overview & Context*

Section 2: *Overall Strategy:*

Section 2.4: *Economic Development and Employment*

Section 2.4.5: *Local indigenous businesses*

Section 4c: *Development Nodes Local Area Plan:*

Section (4c) 1.4: *Growth and Residential Development*

Section 5: *Rural Area*

5.2. **Natural Heritage Designations**

None.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- The Board is requested to pay particular attention to the Planning Authority's 'technical validation' procedure and the 'administrative validation of planning application' forms.
- Consideration should be given to the planning history of the application site with specific reference to PA Ref. Nos. 01/906, 04/564, 04/4495 (ABP Ref. No. PL08.212284), 06/2917, 07/2817 (ABP Ref. No. PL08.228872) & 07/3034.
- There is a stream flowing alongside the northern site boundary which discharges into the River Maine at Cloonmealane Bridge a few hundred metres to the east of the site (This stream passes to the west of the village of Ballyfinnane and it is the appellant's understanding that it originates in 'Slieve Mish' mountain) and in this regard it should be noted that the River Maine flows into Castlemaine Harbour and is considered to be one of Co. Kerry's largest salmon & sea trout angling rivers. The River Maine is also understood to be of secondary special amenity value whilst Castlemaine Harbour has been designated as a Special Area of Conservation pursuant to the Habitats Directive. Therefore, having regard to the foregoing, and in light of the overall

scale and permanency of the proposed building, it is queried as to why no toilet facilities have been included in the submitted proposal.

- The development of a large industrial shed at the location proposed will result in the generation of a significant volume of traffic along a minor local primary road (Local Road No. L-2019-37).
- The proposed development site is located in an area of wildlife habitat which is frequented by the curlew and snipe.
- There are serious concerns with regard to the depth of the drainage channels excavated on site and the possible impact of same on wetland habitats beyond the site boundary.
- It is questionable whether or not there is a need to locate the proposed development at the subject site given the presence of industrial estates / vacant units in the wider area, with particular reference to Farranfore, Tralee & Killarney.
- There are concerns with regard to the carbon footprint of the proposed development.

6.2. Applicant's Response

- The proposed development involves the construction of a shed and an access road to provide for the safe storage of equipment used by the applicant in his business as an arboricultural contractor.
- The technical validation of the planning application was a matter for Kerry County Council.
- The planning history of the site has no bearing on the subject application as previous proposals involved residential developments with associated treatment systems and ancillary services.
- The proposed development is for storage purposes only and, therefore, there is no requirement for toilet facilities. Accordingly, the absence of any wastewater treatment system on site serves to eliminate the possibility of any contamination of the nearby stream / river.

- The proposed development is for storage purposes only and will not be used for industrial activities. It will function as a pick-up / drop-off storage facility with no office or any other activity.
- Minimal traffic will be generated by the proposed development as equipment will be collected in the morning and returned in the evening.
- The clearing of drains is considered to be standard practice.
- The works undertaken on site were carried out prior to the applicant being advised that planning permission was required for both the roadway and the hardstanding area.
- The subject site is centrally positioned for the applicant's work purposes and is also located approximately 1.2km from his home.
- The photographs of other developments provided with the grounds of appeal have no bearing on the subject proposal and it is the applicant's intention to comply with the terms and conditions of any grant of planning permission. Any complaints or instances of non-compliance with regard to other developments are matters for the consideration of the Planning Authority.
- The Board is advised that the applicant is in severe need of the proposed development in order to ensure the successful operation of his business. The facility will ensure that all machinery is securely stored and protected from the elements.

6.3. Planning Authority Response

None.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Overall design and layout / visual impact
- Traffic implications
- Impact on wildlife considerations
- Appropriate assessment
- Other issues

These are assessed as follows:

7.2. **The Principle of the Proposed Development:**

The proposed development involves the siting of a new stand-alone commercial use (comprising the storage of various vehicles and machinery associated with the operation of the applicant's business as a tree surgeon / arboriculture contractor) within a remote unserved rural area and in this regard I would refer the Board to the policy provisions set out in Section 4.8: '*Rural Economy*' of the Kerry County Development Plan, 2015 which acknowledge the contribution of rural employment to the continued and sustainable growth of the County's economy and which seek to promote the sustainable growth of rural enterprise. More notably, it is expressly stated that although lands have been zoned for a range of enterprises (including industry), in local area plans where appropriate, generally within and adjacent to settlements in line with the principles of sustainable development and where infrastructure and linkages provide the optimum location, and whilst it is desirable that economic enterprises should be located within settlements where there is a larger available workforce and less need to travel, it is acknowledged in the Development Plan that it may not always be possible for development to locate in such areas. Accordingly, provision has been included in the Plan whereby small scale indigenous enterprises will be fostered as a means of directing employment into rural areas and, therefore, it is necessary to consider the subject proposal in the

context of Objective ES-25 which states that consideration will be given to proposals for small rural industrial, business enterprise or community led enterprise schemes on lands zoned as '*Rural General*' where it can be demonstrated that there is no suitable site within any settlement in the locality and the proposal would benefit the local economy or would contribute to community regeneration.

Having regard to the aforementioned policy provisions, it is of relevance in the first instance to note that the proposed development is located in an area which has been designated as '*Rural General*' in the Development Plan and thus the submitted proposal accords with the basic zoning criterion of Objective ES 25. However, notwithstanding the foregoing, in my opinion, it is clear that the subject proposal encounters a number of difficulties as regards compliance with the wider qualifying criteria set out in Objective ES 25. In this respect I would advise the Board that other than for a somewhat general reference in response to the grounds of appeal to the subject site having been selected as a result of its central position for work purposes and its location relative to the applicant's place of residence, no further detailed rationale has been provided to justify the siting of the proposed development at the subject location. This failing is further compounded by the absence of any evidence to support a case that the proposed development would be of economic benefit to the local economy or that a detailed search was conducted in an effort to secure a suitable site within the boundary of the local settlement (i.e. Ballyfinnane, Firies etc.), both of which are fundamental requirements of Objective No. ES 25.

Given that the proposed development does not arise from any specific local or rural-based activity, is not locationally bound to the selected site, and is unrelated to any agricultural practice that may be conducted from within the wider site (or area), I would suggest that the proposed development would perhaps be more suitably located on serviced and zoned lands, or alternatively, within the development boundary / limit of an existing settlement. Whilst I would concede that the County Development Plan does not specifically preclude consideration of uses such as that proposed in rural areas or in areas other than industrial areas, it is evident from Objective No. ES 25 that there is an onus placed on any such development proposal to establish a clear case to locate in an unserviced rural area. In this instance, I am not satisfied that the applicant has provided adequate justification for the siting of the

proposed development at the location chosen, particularly in light of the qualifying considerations set out under Objective No. ES 25 of the Development Plan.

7.3. **Overall Design and Layout / Visual Impact:**

In terms of assessing the visual impact of the proposed development it is of relevance in the first instance to note that the subject site is not located within any identified scenic or amenity designation and that the site location has instead been identified as 'Rural General' on Map 12.1(f) of the County Development Plan. In this respect I would advise the Board that these 'Rural General' areas are considered to comprise the least sensitive landscapes in the county where a moderate level of development can be absorbed without significantly altering their character. In addition, it should be noted that the application site is not visible from any view or prospect which is listed for preservation / protection in the Development Plan.

In terms of the overall design and siting of the proposed development, the construction and finish of the submitted proposal will be comparable to agricultural structures common to rural areas whilst it will also be set back a considerable distance from the public road. In addition, it is proposed to provide screen planting between the shed and the public road, although the Board may wish to consider if it would be appropriate to retain the existing screening berms which have been erected along the southern and western perimeter of the existing hardstanding area (seemingly using material excavated from the yard area) as a further screening measure with additional landscaping / planting to be undertaken atop same (in the event of a grant of permission).

Having regard to the foregoing, and in light of the site context, on balance, I am satisfied that the submitted proposal will not unduly impact on the visual amenity of the surrounding rural area.

7.4. **Traffic Implications:**

Having regard to the limited scale and nature of the proposed development, and following a site inspection, I am satisfied that the surrounding road network has adequate capacity to accommodate the increased traffic volumes consequent on the subject proposal without detriment to public safety.

7.5. **Impact on Wildlife Considerations:**

Concerns have been raised in the grounds of appeal as regards the possible impact of the proposed development on an area of habitat frequented by curlew and snipe, however, it should be noted that the site itself is not subject to any statutory designation as regards the protection of bird species or other wildlife. Furthermore, whilst the subject works will inevitably result in the loss of some plant and animal species from within the footprint of the proposed construction, in my opinion, the lands in question are of limited ecological value and the impact arising from the loss of same will be within tolerable limits given the site context.

With regard to the potential for the contamination of surface waters / watercourses in the surrounding area, with particular reference to the downstream River Maine and the Castlemaine Harbour Special Area of Conservation, it is notable that the proposed development does not include for any sanitary facilities and thus there is no requirement to provide wastewater treatment and disposal facilities on site. Whilst I would acknowledge the appellant's concerns in this regard, the proposed development is intended to be used solely for the storage of plant and machinery associated with the applicant's business and thus the provision of sanitary facilities within such a unit would not appear to be warranted. Accordingly, in the absence of any need for on site wastewater treatment and disposal arrangements, the subject proposal would not appear to pose any risk of water pollution / contamination attributable to the disposal of effluent / foul water.

In terms of surface water drainage, it has been indicated in the planning application form that it is proposed to discharge surface water runoff to an on site soakpit, however, no details of this arrangement have been shown on the site layout plan whilst it is also regrettable that no information has been provided as regards the suitability of the underlying ground conditions for such a proposal. Having regard to the site context, I am inclined to suggest that such matters may be addressed by way of condition in the event of a grant of permission, although given the nature of the proposed use and the potential for the contamination of runoff by oils, fuels etc., I would be inclined to suggest that all potentially contaminated runoff should be directed through a suitable oil / petrol interceptor prior to discharge to any soakaway or watercourse.

In relation to the concerns that the drainage works already undertaken on site could potentially have impacted on wetland habitats located beyond the site boundary, I would advise the Board that the applicant has responded to same by stating that the works in question involved the clearance of existing drainage ditches. In this respect it would appear that the works amounted to routine maintenance and thus they would normally be permissible in any instance. Notably, the Planning Authority has not raised any concerns in this regard and thus I do not propose to comment further on same other than to state that the Board has no function in relation to enforcement and that any matters pertaining to unauthorised development should be referred to the Planning Authority.

7.6. **Appropriate Assessment:**

From a review of the available mapping, including that contained in the Kerry County Development Plan, 2015 and the data maps available from the website of the National Parks and Wildlife Service, it is apparent that although the proposed development site is not located within any Natura 2000 designation, it is situated approximately 2.5km southeast of the Slieve Mish Mountains Special Area of Conservation (Site Code: 002185) and 8.0km northeast of the Castlemaine Harbour Special Area of Conservation (Site Code: 000343). In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 9: *'Natural Heritage, Biodiversity & Conservation'* of the Development Plan, to protect all natural heritage sites, both designated or proposed for designation, in accordance with National and European legislation. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on same. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive.

Having reviewed the available information, and following consideration of the 'source-pathway-receptor' model, it is my opinion that given the nature and scale of the development proposed, the site location outside of any Natura 2000 designation,

the limited ecological value of the lands in question, the absence of any wastewater discharges on site, and the separation distance of the application site from any Natura 2000 designations, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of the aforementioned Natura 2000 sites. Therefore, I am inclined to conclude that the proposed development would not be likely to significantly affect the integrity of the foregoing Natura 2000 sites and would not undermine or conflict with the Conservation Objectives applicable to same.

Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site, in particular, specific Site Codes: 002185 & 000343, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

7.7. **Other Issues:**

Procedural Issues:

The appellant has sought to question the validity of the subject application, however, in my opinion, any such procedural matters are generally the responsibility of the Planning Authority which in this instance took the view that the submitted documentation satisfied the minimum regulatory requirements and, therefore, I do not propose to comment in depth on this matter other than to state that the Planning Authority's actions have not infringed the appellant's right to appeal.

Flooding Implications:

From a review of the available information, and as a means of establishing whether or not the proposed development site is located in an area of flood risk, I would refer the Board in the first instance to the National Flood Hazard Mapping available from the Office of Public Works (www.floodmaps.ie) which, although not recording any flood events in the immediate surrounds of the subject site, identifies the area in question as comprising benefitting lands which are defined as lands that might benefit from the implementation of Arterial (Major) Drainage Schemes (under the Arterial Drainage Act 1945) and are also indicative of areas of land subject to

flooding or poor drainage. However, whilst this mapping serves as a useful tool in highlighting the potential for flood events in a particular area, it must be conceded that it is not definitive and thus it would not be appropriate to rely on same for the purposes of flood risk assessment.

Having considered the historical 'National Flood Hazard Mapping' available from the Office of Public Works, I would refer the Board to the 'Preliminary Flood Risk Assessment' prepared by the OPW in 2011 as part of the National CFRAM Programme which essentially encompassed a national screening exercise to identify areas where there may be a significant risk associated with flooding. In this respect it is notable that a considerable portion of the application site is shown to be within the indicative extent of a 1% AEP (1 in 100) fluvial flood event, however, it is important to note that the PFRA is not a detailed assessment of flood risk and is rather a broad-scale assessment, based on available or readily-derivable information, to identify where there is a genuine cause for concern that may require national intervention and assessment rather than locally developed and implemented solutions.

At this point, it is of relevance to reiterate that the application site is located in an area of low-lying land which drains towards the River Maine, that there is extensive evidence of poor natural drainage qualities on site, and that there is a prevalence of significant land drainage measures in the surrounding area.

On the basis of the foregoing, I am inclined to suggest that further investigation of the possible flooding implications of the proposed development would be warranted in this instance. Furthermore, whilst the Planning Report on file has indicated that the Flood Risk Assessment Officer of the Local Authority has no issues or concerns as regards the proposed development, it is regrettable that no further details or analysis have been provided in this regard.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. It is the policy of the planning authority, as set out in the current Development Plan for the area, to permit small rural industrial, business or community led enterprise in certain rural areas where it can be demonstrated that there is no suitable site within any settlement in the locality and the proposal would benefit the local economy or would contribute to community regeneration. This policy is considered to be reasonable. In the absence of any specific locational requirement which necessitates the development of the proposed storage shed / warehouse at this rural, unzoned and unserviced location, the Board is not satisfied that it is necessary to locate the proposed development in the countryside outside any existing settlement. It is considered that the proposed development would, therefore, contravene an objective as set out in the Development Plan and be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

8th August, 2017