



An
Bord
Pleanála

Inspector's Report

300261-17

Development	Slatted shed.
Location	Derrybeg, Letterkenny. Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	17/50489
Applicant	Thomas Friel
Type of Application	Permission
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party v Refusal
Appellant	Thomas Friel
Observers	An Taisce Nuala Coll
Date of Site Inspection	22 nd March 2018
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site is in Derrybeg, Letterkenny. Co. Donegal in a rural area in the Coastal hinterland of Gweedore Bay. While there are quite many one-off houses in the area, it is in a peripheral location relative to the settlement concentration around Derrybeg and Bunbeg. The site is within about 110m of the Gweedore Bay and Islands SAC and Donegal West SPA which overlap. The immediate terrain, while elevated above the sea is fairly flat and exposed with fields marked in part by stone walls.
- 1.2. The subject site of a stated area of 0.73 hectares, comprises a small rectangular area of ground with a house which fronts the road and sheds to the rear and a large rectangular area further to the rear extending about 110 metres in depth which has cattle sheds and a yard and an open field used for grazing. Total building areas amount to 493 sq.m. of which about 100sq.m. relates to the house. There are accesses to the yard/farm along both sides of the house and the field also has direct independent access from the public road. The main yard access is indicated as being to the west of the house.

2.0 Proposed Development

- 2.1. It is proposed to construct a 5-bay slatted shed with a total floor area of 378 sqm. It has a footprint of 16.25m x 30m with an overall height of 6.05m, (eaves are 4m high.) Four agitation points are indicated – 2 at each end.
- 2.2. This replaces a previously permitted shed of 227 sq.m. which has not been constructed. The proposed development is comparable to an extension of 151 sq.m (2 bays/4 pens and cattle creep) to the rear of that permitted shed.
- 2.3. In further information a Fertilisation Plan is provided setting out livestock and slurry calculations among other details, together with slurry spreading maps stated to be in accordance with the EU (Good Agricultural Practice of protection of Waters) Regulations. 235m³ slurry production with 50m³ exported.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to refuse planning permission for reasons based on:

- Nuisance and impact on residential amenity and
- Insufficient evidence of sufficient land holding to accommodate the slurry/livestock associated with shed and consequent impact on public health and Natura 2000 sites.

3.1.2. The reasons stated are:

1. The subject site is located within a rural landscape characterised by the development of established private residential development within proximity of the subject site. It is an objective of the County Development Plan, 2012-2018 (as varied) to support a balanced approach to rural areas to retain vibrancy and ensure the continuity of established rural communities. – CS-0-10 refers. It is considered that the proposed development by reason of (i) scale, (ii) character, (iii) close proximity (iv) noise and odour nuisance would result in a disorderly and bad neighbour development which would if permitted be seriously injurious to the residential amenity, privacy, enjoyment and value of established residential properties within close proximity of the subject site. Accordingly, it is considered that the proposed development would be prejudicial to the balance between agricultural development and residential amenity in the host rural area, would set an precedent for similar types of disorderly development, would be contrary to the said objective of the said Plan and would thereby be contrary to the proper planning and development of the area.
2. Having regard to the scale of the proposed development and its capacity to house significant numbers of animals, the associated waste products likely to be generated to the close proximity of the proposed development to established residential properties and to the fact that the development would operate beyond the capacities of the farm holding without sufficiently reliable interests in other lands, the planning Authority is not satisfied that the

proposed development would not result in a public health nuisance as a result of odour, noise, vermin control or other. Accordingly, to permit the proposed development would be contrary to the proper planning and development of the area.

3. The subject site is located in close proximity to the Natura 2000 sites ... and it is policy of the Planning authority to "ensure the protection Natura 2000 sites in accordance with the EU Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, qualifying interests and threats to the integrity of these Natura 2000 sites" – Policy NH-P-2 of the County Development Plan 2012-2018 (as varied) refers. Having regard to the proximity of the site to the said Natura 2000 sites, to the scale and nature of the animal housing proposed, to the fact that same operates beyond its capacities of the applicant's farm holding and that the applicant has not demonstrated sufficiently reliable interests in other lands, the planning authority is not satisfied on the basis of the information submitted that the proposed would not if permitted result in adverse impacts or affects on the said Natura 2000 sites. Accordingly, to permit the proposed development would be contrary to the said policy of the said plan and thereby to the proper planning and sustainable of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report:

- 3.2.2. The planning report outlines the planning history, the objections and Further Information was requested in respect of livestock details, slurry management and farm building management/cleansing. This was based on condition attached to a previous permission relating to the management and disposal of slurry and the need for substantive information given the increase in size and capacity and the nature of potential impact on the environmental and on residential amenities. This was submitted and deemed significant and revised notices were sought.

- 3.2.3. In the reviewing the proposal as clarified with the further information, the planner refers to the previous Board decision and disagrees with the seemingly unequivocal support taken by the inspector for agricultural development in an established farm

holding. Developments cannot continue to advance irrespective of impact on amenity on residents. The issues are more complex as compared to smaller scaled approved shed. While in agreement with the unreasonableness of retrospective complaining about farm nuisances originating from activities before the residents moved beside this should not apply for all future developments. The land holding on which the shed is proposed is surrounded by dwellings and are not all holiday homes. It is very small site with the consequence of the applicant relying on export of slurry to other land.

It is considered important to now establish a limit having regard to impact on amenities and capacity issues. If these cannot be addressed then an alternative site should be sought away from houses.

Finally, based on objective consideration and the precautionary principle it has not been possible to screen out Appropriate Assessment.

3.3. **Statutory Consultees**

- Irish Water: No reply
- Development Applications Unit, Department of Arts Heritage and Gaeltacht (DAU): no reply

3.4. **Observation**

3.4.1. Correspondence on file indicates a representation from Cllr Seamus O'Domhnall.

3.4.2. A letter of objection from Nuala Coll and others was submitted to the planning authority and referred to:

- Inconsistencies of decisions by planners. Previously refusal of permission overturned and upheld by the Board
- Disputes the inspector's rationale and assumptions on which the recommendation to grant was previously made. For example, the validity of existing farm use is challenged by reference to unauthorised development.
- The area is predominantly residential and the amenity of these residents should not be compromised by one small farm.
- Unfair that collective plea of residents and their health concerns is ignored.
- Nothing is in place to safeguard residential amenities and residents

- Traffic Safety – lack of capacity of roads, dispute use of shared access – it is residential and not for heavy farm vehicles.
- Land holding/rights: Further clarity on landholding and rights to grazing and slurry management is needed. It is submitted that 60% of mapped lands as set out by applicant are not in his control. Proof of grazing rights and slurry spreading are not agreed with owners and proper documentation should be sought.
- The applicant is reliant on alleged commonage Lands in SAC. This site is disputed and is complicated by the fact as it is an SAC as it cannot be fenced so grazing cannot be controlled.
- It is submitted that the island lands are not, nor have they ever, been used for grazing by the applicant.
- Residents at Meenaniller forbid spreading of slurry. Evidence of a lease is needed.
- The holding is limited to small pockets of land.
- Concern about Bad farm management, e.g. issue of slurry mess in SAC due to spillage in transport.
- Slurry generation is 235.6 and not 125.6.
- Slurry sites are compromised: The land at Stranabrooey borders a river where there has been seepage in the past

4.0 Planning History

An Bord Pleanala ref. PL05E.246423 refers to a decision to uphold the planning authority's decision to grant permission for a 3-bay slatted shed of 227.25 sq.m. on the same site and at the same location within the site. This was revised following a request for further information. In that case the DAHG Wildlife Section returned a report saying it had no comment. The inspector relied on the report submitted in the previous case PA ref 14/50734 for slatted at the northern end of the site. (Details in pouch)

PA ref. 07/30322 refers to permission for a slatted shed (not built)

PA ref. 14/50734 refers to refusal of permission for a slatted shed on grounds of residential amenity, traffic and flooding.

PA ref. 16/50062 refers to permission to retain an agricultural shed.

5.0 Policy Context

5.1. The County Donegal Development Plan, 2018-2024

- 5.1.1. This plan was formally made by the Elected Members of Donegal County Council on 9th May, 2018 and has effect from 5th June 2018 for a period of 6 years until 2024.
- 5.1.2. The traditional activities of farming, tourism and forestry still have and will continue to have an important role to play in the rural economy of the County.
- 5.1.3. Settlement: Derrybeg together with Bunbeg is identified as a Tier 2 strategic town whereas it was a tier 3 settlement in the previous plan. The settlement framework map for Bunbeg-Derrybeg shows the development boundary extending to a location south of the subject site.

5.1.4. Development Contribution Scheme 2016-2021

Agricultural buildings / Horticulture /	Below 200 m2 exempt
Garden Centre - Nursery	Above 200 m2, €2.50 per m2 for every m2 above 200m2

- 5.1.5. Donegal County Development Plan 2012-2018 was the operative plan at the time of application for permission.

5.2. Natural Heritage Designations

Gweedore Bay & Islands SAC (Site Code 001141).

West Donegal Coast SPA Site Code 004150

5.3. Grounds of Appeal

5.3.1. The decision to refuse permission has been appealed by the first party through Carlin-Havlin Architectural Services and Planning Consultants. The grounds of appeal refer to:

- The Planning history is clarified: There is a recent grant by the Board upholding the planning authority grant (PL05E.246423) which was very similar to a previous grant (07/30322). The location (of permitted shed to be extended) within the site was dictated by the planning authority.
- A small extension was permitted for retention as an extension to existing sheds.
- Previous cases to the grant were invalidated and refused. A quite different layout was proposed wherein a new access was proposed for a more remote shed in context of existing yard.
- The request for further information implied an acceptance in principle as it related to matters of detail concerning livestock, slurry and farm management practice all of which have been submitted in compliance with the Good Agricultural Practice Regulations, the implementation of which is the responsibility of the Department of Agriculture. The submitted fertilisation plan has been approved. There is no reasonable basis to believe this plan is inoperable by the planning authority and therefore permission should not have been refused.
- The principle of consolidation is established in the Board's previous decision. In that case the inspector stated that there are 'no grounds for deeming the proposed development should be refused because it adversely impacts on the amenities of adjoining residents or because it adversely impacts on property values. Residents of the area have chosen to reside in this rural area and agricultural practices and activities are an inherent part of rural living. It is further noted that in that inspector's report that the role of ensuring good practice in the farm is in the remit of that same department whereas the management of the SAC is within the remit of the Department of Arts, Heritage and the Gaeltacht.

- The allegation of 60% of lands not big owned or legitimately used by the applicant is refuted and this is supported by information in Appendix 5.
- It is clarified the applicant owns 9.7 ha, leases 23.8 and has commonage rights over 47.7 hectares.
- The need for the development arises out of the need to cease wintering animals on the sand dunes and the removal of the dung heap which benefits both residential amenity and commonage lands in the SAC such as the dunes as well sustaining a viable farming livelihood.
- The applicant is fully aware of restrictions on traditional farming activities such as grazing and slurry spreading on the islands etc and land in the SAC and has no intention of slurry spreading or on commonage lands. The fertilisation plan uses Teagasc software and ensures compliancy of elements and compounds on the various land parcels having regard to designations.
- It is conceded that slurry storage required is 235.6 m³. The 135.6 figure was a typo.
- He accepts that historically he used the SAC lands for spreading prior the designation and restrictions.
- He has no awareness of the requests cease spreading in non-SAC lands.
- The exporting of slurry to a neighbouring 3 miles will amount to 8 trips using a slurry spreader which amounts to 1 trip every 17.5 days over the 20-week wintering period.
- He is fully compliant with the Department of Agriculture requirements and the department is content that he has sufficient land to spread slurry generated. The capacity issue is reviewed annually and there are sufficient safeguards in place.
- The fertiliser plan has been approved and on-going monitoring is evident.
- It is acknowledged that the applicant was sanctioned regarding overwintering grazing on the commonage and 15% of area of natural constraint and loss of payment under the Basic Payment Scheme.

- The lands at Meenaniller have been leased by the applicant for 20 years and extend family lands. The lands a Stranabrooey been continuously leased for 17 years.
- The applicant has enjoyed commonage right for 40 years.
- Impact of SAC. The impacts have already been assessed for development of this size by the dep of Arts, Heritage, the Gaeltacht for the previous application. (14/50734). In this it was accepted that permission could be granted subject to conditions. The ongoing monitoring of the farm would fall within the remits of the other relevant departments as acknowledge in the previous inspector's report.
- The appeal should be confined to the shed and not farm practices.
- A 227 sq.m. shed would not accommodate the livestock at the recommended stocking rates
- This will complete his farmyard accommodation needs.
- The proposal follows advice of an agricultural consultant.
- Lands must be maintained in what is referred to as good agricultural and environmental condition GAEC and this is done by grazing at sustainable levels. It cannot lead to overgrazing or under grazing.

5.4. Planning Authority Response

- 5.4.1. The planning authority remains of the view that the material issues have been considered in the determination of its decision and refers the Board to its report of 18th October 2017 and requests that its decision be upheld.

5.5. Observation from Statutory Bodies

- 5.5.1. An Taisce raises the following issues:
- The Board must apply the principle of functional interdependence (by reference to recent High Court ruling the case of the Bord na Mona's Edenderry Plant – An Bord Pleanala ref. PL19.245295) and accordingly consider the impact of the development on grazing and slurry having regard to the proximity of these associated activities to sensitive habitats.

- Concurs with the planning authority that the proposed development cannot be screened out from appropriate assessment.
- The planning authority reasons for refusal have not been adequately addressed
- Concerned about the scale of accommodation and consequent increase in cattle.

5.6. Third Party Observation

5.6.1. Nuala Coll has submitted an observation raises similar issues as in objection to the planning authority. The following points and allegations are made in detail:

- Concern about Impact on health and amenity of residents who are at distances of 20m from the development.
- Observer and husband have health issues which are not helped by the nature of development and concerned about wider health issue of slurry housing.
- Seeking legal advice as to who would be accountable for loss of loss of value to homes and incidences of fatality due to road safety issue arising from increase in traffic.
- The grounds of appeal lack substantiation from regulatory bodies
- Disputes commonage rights and this is supported with a co-signed petition and folio references.
- It is not an agricultural area. 'Established' sheds are substantially unauthorised. No one farms due to the soil.
- The applicant's livestock grazes on unfenced restricted land - photographs appended.
- Information should be affirmed by the Department of Agriculture
- There should be evidence of proper slurry spreading leases.
- Rights to land should be legally verified.
- It is alleged that there is evidence of bad farm practice in the appellants existing yard and sheds.

6.0 Assessment

6.1. Issues

6.1.1. This is a first party appeal against a refusal of permission for a 378 sq.m. slatted shed on a small parcel of land situated amid a number of dwellings in a rural area. Previously the Board upheld the planning authority's decision to grant permission for a 227 sq.m. shed (not yet built) and the applicant is effectively seeking to extend this. The planning authority has decided to refuse permission for the larger slatted shed having regard to the impact on residential amenity and concerns relating to the carrying capacity of land and consequent environmental impacts.

6.1.2. The issues which arise in relation to this appeal are

- Principle of development
- Potential for pollution - intensification of use beyond the carrying capacity of lands.
- Impact on residential amenity
- Appropriate Assessment Screening

6.2. Principle of development

6.2.1. The site is located on a site of 0.73 hectares which is part of a parcel of about 2.27 hectares (which includes land to north as shown on site location map and land to south shown as part of further information) and which is part of a fragmented holding extending to over 80 hectares in the area. Just under half is commonage and much is restricted from traditional farming methods such as over-wintering grazing and spreading of slurry given the location of much of that land in an European Site.

6.2.2. The proposed development is effectively a net extension of c 151 sq.m. It is also, I note in addition to existing sheds within the yard. There is strong opposition by the residents to the proposal having regard to the residential character of the area and there is some dispute as to the dominant character of the land. The planning authority I note refers to the rural character in its previous decision but is mindful in this case of the extensive residential development. There are, I note, many houses in the area, yet the area lacks public services and is well outside the development

boundary of the designated Derrybeg development area. It is removed from the catchment for planned services – such as wastewater treatment works. The field pattern and extensive grazing is evidence of long-established agricultural use of the land and while clearly there has been somewhat of a proliferation of one-off houses in this scenic coastal area, the underlying indigenous use of the land is for agriculture. This use has and continues to influence local regional and national policy and plans. Notably it is a use critical to the conservation of Annex I Habitats, whereas urbanisation and recreational use is identified as a threat. Housing can be provided with enhanced access to services and amenities in development centres whereas farming can only be accommodated in open fields. To refuse permission for upgrading of farming facilities, on principle, in this area, would potentially sterilise the land from agriculture which has a tradition of being grazed and may give way to pressure for additional one-off housing (particularly in to the next generation) reliant on septic tanks and outside a serviced area which would be fundamentally contrary to the sustainable development of the area. I note from the planning history that the planning authority was agreeable in principle to the location of the shed within the site having regard to its previous decision to grant permission twice at the same location but refused a different layout.

- 6.2.3. Accordingly, I consider the principle of what is effectively an extension to a permitted shed to be acceptable. That said, permission is predicated on the shed being acceptable in terms of compatibility with other objectives in the development plan and overall protection of the environment and public health. The amenities of residents are a consideration but such, has to be in the context of an established farm and in a rural area where farming is an indigenous activity.

6.3. Intensification and impact on environment

- 6.3.1. The planning authority is concerned about the farmer expanding yard facilities in excess of the capacity of the land holding and the consequent environmental impact. The residents also complain of breaches of good practice.

General

- 6.3.2. Based on the agricultural consultant's submission there has been a 30% increase in livestock since 2007 which is the date of the original permission for a slatted shed on site. That shed was to replace the dung stead etc and provide for over wintering

livestock. This was not built due to finances and in the intervening years it appears that the applicant constructed a small shed extension on site and then sought permission for its retention. He was also sanctioned for over-wintering of cattle on dunes in a restricted area. Evidently, he needs additional livestock housing and slurry storage for the over-wintering period for an increased livestock. Given the Regulations in place I do not consider the shed is likely to generate further additional livestock.

- 6.3.3. In respect of best practice and land capacity the applicant has provided a Fertiliser Plan which demonstrates land capacity. As part of this there appears to be an ongoing arrangement of exporting 50m³ of slurry. There are concerns that the Fertiliser Plan does not necessarily demonstrate compliance with good agricultural practice. This is not considered a reasonable objection by the applicant as such a plan can only be deemed operable or inoperable by the relevant competent authority such as the department of Agriculture and this position was adopted by the inspector in the previously appealed case – essentially making the case that the detailed matter of standards of agricultural practices are not a matter for the planning authority.
- 6.3.4. In this regard I have looked at a range of decisions by the Board relating to slatted sheds and I note that matters of detailed compliance with the Good Agricultural Practice Regulations is relied upon as a condition of permission and is generally accepted as being governed by a separate code.
- 6.3.5. I also note the Good Agricultural Practice Regulations comprehensively address farm management. This does not however preclude the planning authority from considering environmental impact or amenity issues. There can be a degree of overlapping between the boundaries of governance in the environmental management. I accept that the planning authority cannot ignore direct and indirect consequences of a development on the environment. A degree of proportionality and common sense needs however to be applied.

The Shed

- 6.3.6. The function of the larger shed is to upgrade and modernise the facilities for improved livestock accommodation and will as is already the case in the extant permission remove a dung stead as it will also contain slurry until it is seasonally

appropriate to use. The design is based on average stocking rates and best practice. I note the site is substantially within a River catchment of 'Good' status.

(catchemnts.ie) It is reasonable to conclude that the propose slatted shed structure, subject to standard conditions and having regard to regulations already in place will not result in pollution or a deterioration of water quality and in this context, would not give rise to public health concerns. I further note that the executive scientist in the planning authority in the previous case (PA15/50718) viewed the overall development to constitute an improvement, stating that '...The slatted shed being more cost effective and economically beneficial method for containing slurry and adherent odour.'

Landspreading

6.3.7. The applicant confirms that there will be no slurry spreading on commonage land and that grazing is controlled by GAEC. It must be accepted that the Fertiliser plan provides a reasonable account of the livestock scale and that the applicant has sufficient lands to accommodate the slurry in accordance with the Department of agriculture's requirements as declared. I have examined these regulations and am satisfied that they address a full spectrum of farm management matters such as public health. I further note this is subject to annual review which serves as a safeguard to environmental degradation of lands and the farm yard. The applicant has stated the shed will comfortably meet with the standards for housing cattle. He further states that his landholding and rights to land provide for adequate slurry spreading capability. The fertiliser plan illustrates the projected slurry storage requirements for the cattle and it is confirmed that this has been approved by the Department.

6.3.8.

Grazing

6.3.9. The traditional practice of grazing on the islands and overwintering is no longer possible and this accepted by the applicant. While there is concern that the applicant will breach best practice it would appear the Department is quite active in applying its powers. In this case the applicant has been sanctioned and ultimately the slurry management and grazing is actively controlled through restriction of payments and penalties. The shed will provide for over-wintering livestock. By

removing wintering cattle from the dunes and thereby controlling grazing levels, it is difficult to object to this on wider environmental grounds.

Legal Entitlement and Governance

- 6.3.10. It is also important to separate what is a matter of civil dispute and what is within the scope of the planning acts having regard to other statutory provisions. The planning act and, by extension, a grant of permission does not give the right to breach other legislation. It cannot for example confer a right to commonage. Accordingly, if it were to be the case that the applicant did not have access, a grant of permission does not confer the right to access. The lands at Meenanillar are a point of dispute as this is where the residents are objecting to slurry spreading but the applicant is not aware of this and has had established entitlement to these lands for over 17 years. I note he only needs about 8 hectares for slurry spreading and it has to be accepted as bona fide statement that he has these lands based on the submissions. In the event that it is established, whether by further restriction through the Regulations or by loss of legal entitlement, then the matter of slurry and grazing control remains to be controlled by the appointed statutory body.
- 6.3.11. As in the previous case, I accept that the practices on the farm are and will continue to be the subject of ongoing monitoring by the Department of Agriculture while any impacts on the Natura Network and Annex 1 Habitats and Species comes under the remit of the Department of Culture Heritage and the Gaeltacht. Although many funding programmes are interdepartmental. The Areas of Natural Constraints Scheme for example controls grazing with one of the requirements being that the type of animal must be appropriate to the land and there must be handling facilities available to meet the animal welfare requirements.' The applicant states that he part of this scheme.
- 6.3.12. Without prejudicing the Appropriate Assessment screening process, on balance, I consider the additional 151 sq.m. will not contribute to any significant environmental degradation by reason of intensification of farming activities on the site or associated lands.

6.4. Impact on Amenity

- 6.4.1. The extension as compared to that permitted will only marginally reduce the separation distance in the case of one of the three surrounding dwellings within 100m of the site. The house to the north west will have a separation distance of 53.25m as compared to 58.5m. The house to the west will have a separation distance from the extension of 40m as compared to 39m for the extant permitted shed. The dwelling to south east (observer) will remain at 40m as the extension is at the other end.
- 6.4.2. The activities associated with moving and managing livestock would have the potential to cause disturbance by reason of noise. In terms of odour, due to the replacement of a dung stead and tanking of slurry this constitutes an improvement in terms of containment of slurry and adherent odours. Run-off is to be managed and contained. The only significant source of odour would be from the slurry tank during agitation and collection of the slurry. The agitation and drainage points are distributed to four separate points which should dilute odour emission subject to management. Notwithstanding adherence to agricultural best practice, the timing and management of this could be addressed by conditions of planning permission in the interest of amenity.
- 6.4.3. It also must be noted that the proposal is for over wintering and caters, in terms of slurry, for a 20-week period over winter months. Account must also be taken of the relatively small scale of the development in net terms and of previous permitted separation distances. I also note the location is s previously agreed and accepted previously by the planning authority and the separation distances are substantially maintained. I also note that a separation distance of 30-40m from dwellings is quite frequently accepted in cases on appeal. I see no demonstrable reason why nuisance would place the subject development in a position of causing serious injury to residential amenity as compared to that previously permitted by the Board.
- 6.4.4. With respect to visual amenity, I consider a farm building of simple profile and traditional colour which located as part of a group of building to be acceptable in this scenic coastal area. In terms of local views, I note the absence of boundary enclosure and consider a demarcation between the site and the dwelling to the south should be provided with appropriate treatment, for example a stone wall with a

hedge of indigenous species. The Board could seek additional details but this would otherwise be reasonably controlled within the scope of conditions of any permission.

- 6.4.5. In terms of access the drawing indicates that the farm entrance is to the west of the site frontage. However, the access to the field where the shed is proposed would appear to be more directly served by the more northern entrance point which is nearer the neighbouring (appellant) dwelling. It would be preferable to rationalise the access arrangements and maintain segregation between the slurry tankers accessing the site and the neighbouring dwelling. For this reason, a condition clarifying arrangements such that the main entrance shall be the more southern access and that traffic management scheme should be submitted for written agreement of the planning authority. Alternatively, the Board could seek these details prior to a decision.
- 6.4.6. With respect to the wider traffic concerns there is concern about the nature of the traffic on substandard roads shared with residents. Having regard to the scale of the developed relative to the extant permission and also to the potential for reduced traffic associated with transport livestock during winter season and which is ordinarily supported by the applicant's lands I do not consider the proposed development will generate additional traffic to a level that would constitute a traffic hazard. There is no objection from the Roads department on file. Traffic hazard does not in this instance constitute reasonable grounds for refusal.

6.5. **Appropriate Assessment**

- 6.5.1. In accordance with the Habitats Directives and implementing legislation of its various provisions, the Board is required as the competent authority to take into consideration the possible effects a proposed development may have, either on its own or in combination with other plans and projects, on a Natura 2000 site, before deciding on the proposed development.
- 6.5.2. No Natura Impact Statement was submitted as part of the application and in this regard I note in the previous case before the Board, the Inspector concluded that the proposed development could be reasonably developed without any known indirect impacts arising from the construction and use of the shed for the Natura 2000 sites in the wider environs. It was therefore concluded by the Inspector that on the basis of

information on the file (considered adequate) that the proposed development individually or in combination with the plans or projects would not be likely to have a significant effect on the nearby European site or any other such site in view of the respective Conservation Objectives. A stage 2 AA was not considered to be required. The Board adopted the screening for appropriate assessment undertaken by the Inspector and concurred that a Stage 2 Appropriate Assessment was not required.

Step 1 - Identification of Potential Sites.

- 6.5.3. Gweedore Bay & Islands SAC (Site Code 001141), is located about 100m from the subject site and about 154 from the proposed shed footprint. West Donegal Coast SPA Site Code 004150 is similarly about 100m away from the site boundary. Having regard to the nature of the proposed development, the site could potentially undermine habitats and species of conservation interest by indirectly impacting on water quality via land-spreading activities and/or indirectly through under or overgrazing activities associated with the overall farm activities.
- 6.5.4. These Natura Sites are also fed by the same Gweedore river catchment in which the associated slurry spreading land serving the slatted unit/farmer is located. They also include some of the commonage in which the applicant has an interest.
- 6.5.5. There would be no potential for other European sites to be affected due to their separation distance from the development and the absence of effective pathways between them and the development.

Step 2 - Conservation objectives

- 6.5.6. The Gweedore Bay & Islands SAC: The habitats and species for which the site has been designated are:

Coastal lagoons

Reefs

Perennial vegetation of stony banks

Atlantic salt meadows

Mediterranean salt meadows

Embryonic shifting dunes
Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
Fixed coastal dunes with herbaceous vegetation (grey dunes)
Decalcified fixed dunes with *Empetrum nigrum*
Atlantic decalcified fixed dunes (Calluno-Ulicetea)
Dunes with *Salix repens* ssp. *argentea* (Salicion *arenariae*)
Humid dune slacks
Machairs (* in Ireland)
Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea
uniflorae and/or Isoeto-Nanojuncetea
European dry heaths
Alpine and Boreal heaths
Juniperus *communis* formations on heaths or calcareous grasslands
Euphydryas *aurinia* (Marsh Fritillary)
Lutra *lutra* (Otter)
Petalophyllum *ralfsii* (Petalwort)
Najas *flexilis* (Slender Naiad)

6.5.7. The West Donegal Coast SPA features of interest are:

Fulmar (*Fulmarus glacialis*) [A009]
Cormorant (*Phalacrocorax carbo*) [A017]
Shag (*Phalacrocorax aristotelis*) [A018]
Peregrine (*Falco peregrinus*) [A103]
Herring Gull (*Larus argentatus*) [A184]
Kittiwake (*Rissa tridactyla*) [A188]
Razorbill (*Alca torda*) [A200]
Chough (*Pyrrhocorax pyrrhocorax*) [A346]

6.5.8. Conservation objectives are set out by the NPWS for each of the sites and aimed at maintaining favourable conservation condition of the species and habitats listed as

special conservation interest. There is extensive supporting documents for the Gweedore Bay site.

Step 3 - Potential likely and significant effects:

6.5.9. The elements of the proposed development that would potentially generate a source of impact are:

- The shed structure and its construction
- The slurry tank construction and its management
- Run-off and surface water and general yard and farm management
- The generation of slurry spreading
- Potential for influencing levels of grazing

6.5.10. As the development footprint is outside the site and within a farm complex it is not physically encroaching on the habitats or species listed as being of conservation interest. Accordingly, there would be no direct effects consequent on the building of the shed at this location. Nor is the development site directly connected to the designated sites by any watercourse or surface water feature on the site. I note the DAU's previous concerns about foraging on a previous development site under assessment but in that case the shed was in a remote part of the field and at the nearest point to the SAC, whereas the subject shed is adjacent to the existing farm buildings and near a cluster of houses. Due to activities and disturbances, it is unlikely to be a foraging area of significance.

6.5.11. There are some possible potential significant effects by a number of indirect pathways such as grazing, yard run-off and land spreading.

6.5.12. The effect of a change in grazing -either by causing under grazing or over grazing is potentially an issue caused by housing provision for livestock. In the case of the SAC, grazing, both inside and outside the site is a high-ranking threat. Stock feed as part of livestock farming and animal breeding (without grazing) inside the site is a low-ranking threat.¹ In the case of the SPA, grazing is identified as a positive Impact

¹ Medium ranked threats are paths tracks cycle tracks, (outside), golf course dispersed residential development(outside), camping and caravans, Low ranked threats are aquaculture, airports (outside), sports pitches(inside), erosion (inside and outside), peat extraction outside, other discharges(inside), removal of beach materials,

of medium rank. The threats to the site, ranked as 'low', are predation and competition (within and outside the site) and fertilization (e.g. in the golf course) outside the site.

- 6.5.13. The effect on water quality by contaminated run-off wither within the yard or during transportation or by slurry spreading near watercourses would contribute to undermining the habitats reliant on a certain quality of water. Although runoff from the site would have to percolate through soil before draining towards the European sites and would unlikely by itself to have a significant effect on the quality of waters within the European sites.

Step 4 - Potential Effects in combination with other plans

- 6.5.14. As no direct effects on the European sites could arise from the shed development, they could not be likely or significant even in combination with any plans and projects.
- 6.5.15. Runoff from the site could have a likely significant effect on the quality of waters within the European sites, and consequently on the achievement of their conservation objectives, in combination with other projects if such projects were other agricultural developments that caused runoff that gave rise to pollution of groundwater and surface water bodies that drained to Gweedore Bay.
- 6.5.16. Of more significance is, the potential indirect effect from land spreading of slurry in the immediate vicinity of tributaries into the Sites which would be of greater likelihood and significance if similar land spreading from other slatted sheds occurred there. This is relevant in the context of the Nitrates Action Plan.
- 6.5.17. The Department of Heritage Planning and Local Government for example is aware of the importance of protection of European Sites and hence the Draft NAP Review has been conducted with the intention of avoiding adverse effects on European Sites and prioritising protected areas objectives.... The measures of the Draft NAP have been influenced to avoid, as appropriate, measures that could have an adverse effect upon the integrity of a European Site(s). Any projects falling under the requirements of the Draft NAP shall be required to conform to the mitigation measures contained within this NIS and to the relevant regulatory provisions aimed at preventing pollution

or other environmental effects. In addition, lower level projects arising from the implementation of the Draft NAP may themselves be subject to Screening for AA.

Step 5 - Evaluation of the potential effects identified above using the source-pathway-receptor model.

- 6.5.18. A poorly designed or managed slatted shed together with the transportation of slurry and associated land spreading activities and consequent generation of widespread runoff of effluent in the area via groundwater and surface could, by itself and with other similar activities potentially have a negative impact on the water quality and consequently water dependant habitats on which species of interest. This cause effect relationship could undermine the achievement of the conservation objectives of both the SPA and SAC in relation to these habitats and species.
- 6.5.19. In this application the proposal is for an additional 2 bays to the three that have been permitted and as in that case, the effluent generated would be contained within the slatted tank until it is collected and used for land spread. The only discharge therefore arising in the immediate environs would be the surface water that would require management as part of the overall management of the farm complex which would continue to be subject to ongoing monitoring by the Department of Agriculture and Food. In the previous permitted case the DAU were consulted and had no comment to make but this followed a similar prior proposal to which it had responded and this was referred to by the Inspector who noted the Department's view in its acknowledgement of the potential impact for Annex 1 Habitats in the wide areas but considered farm yard management conditions were adequate to address potential impacts and notably it was considered adequate to condition land spreading such that it avoids European Sites except where traditionally practiced. The applicant is aware of the restriction in this regard and mindful of the DAU previous comments and in the proposal, confirms compliance with the relevant regulations and that slurry spreading would not take place on European Sites. A detailed Fertiliser plan/Nutrient management plan is also provided in addition to clarification of livestock levels and land bank.
- 6.5.20. There are two wider considerations in respect of Land spreading. Firstly, I have examined the EPA data in catchments.ie and I note one of the rivers near one of the

sites for slurry spreading is classed as 'poor' quality whereas other lands are closest to two river catchments that are classed as 'good'. Overall however I note that these River Basins are not identified as being under agricultural threat.

- 6.5.21. Secondly, Ireland's fourth Nitrates Action Programme (NAP) came into effect 1st January 2018 and builds on the experience of and progress made in strengthening water protection measures and achieving optimum soil fertility and improving nutrient efficiency and has been given legal effect by Good Agricultural Practice for Protection of Waters Regulations with changes in 2014, and 2017 and 2018.
- 6.5.22. Notably, the Draft Nitrates Action Programme has been subject of Appropriate Assessment. The conclusion in the Natura Impact statement was that there will be no adverse effects on the integrity of any European Sites. In reaching this conclusion the NIS refers to the purpose of the NAP and in terms of the likely significant effects of the programme and where these would adversely affect the integrity of European Sites the assessment identified that the existing and proposed measures, which address landspreading among other practices, are predominantly positive for European Sites.
- 6.5.23. The mismanagement of Grazing by livestock supported by the proposed shed could undermine the fragile habitats including the foraging grounds for species of conservation interest and this in turn would impede the achievement of the conservation objectives of both the SPA and SAC. For example, The Conservation objectives supporting document for coastal habitats Gweedore Bay and Islands SAC (site code 1141) (February 2015) published by the NPWS explain the status of the site and nature of threats in details. This document states for example that grazing pressure is most intense in the unfenced northern part of the *21A0 Machairs habitat. This area is grazed by sheep and is closely cropped. To the south of the access road serving the pier, grazing is slightly less intense. The recommended management for *21A0 Machairs in Ireland is winter grazing by cattle. This type of management allows plants to flower and set seed, but prevents the habitat from becoming rank (Cooper *et al.*, 2005). Sheep grazing during the summer months tends to result in a tightly grazed sward which tends to become less diverse over time if herbaceous species fail to set seed. The *2130 Fixed dunes (grey dunes) and 2190 Humid dune slacks in the south of the site are lightly grazed by cattle, and, in parts, a slightly increased intensity of grazing would be of benefit to the habitats

6.5.24. It is evident that grazing is complex factor which has both positive and negative implications if unmanaged. It needs to be finely balanced in terms of livestock type, date duration and extent. The applicant Fertilisation plan which is annually reviewed by a statutory body sets out the livestock status.

Determination on likely significant effects

6.5.25. There is extensive governance over farming development and practices and this is acknowledged in the applicant's appeal submission (page 4 refers to the Statutory Mandatory Requirements and cross compliance.) He further states that he is fully compliant with all Department of Agriculture Requirements. The construction and operation of agricultural developments such as in this case with respect to preventing negative effects on the quality of waters, the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014 (SI no. 31 of 2014) as amended are relevant as they require a specific physical form for farmyards and the structures in relation to the minimization and collection of soiled water and the storage of manure and effluent. These Regulations govern farm yard management (soiled water, collection and holding, certain storage facilities for difference manure types), nutrient management (duty of occupier) prevention of water pollution from fertilisers and certain activities, among other matters such as function of public authorities and notably the Minister for Agriculture, Fisheries and Food shall carry out, or cause to be carried out, such monitoring and evaluation programmes in relation to farm practices as may be necessary to determine the effectiveness of measures being taken in accordance with these Regulations.

6.5.26. This applicant's compliance is therefore I consider sufficient to avoid any effect arising from the runoff of drainage from the development and the farmyard, of which it is a part that could, in combination with the runoff from other agricultural development, be a likely significant effect on a European site in view of that site's conservation objectives.

6.5.27. I accept the points raised by An Twice and the concerns of the planning authority in respect of functional relationship between the proposed development and activities such as grazing and slurry spreading. Notwithstanding, I am satisfied that the scale

of development in this case together with other regulatory controls and plans in place specifically address the threats identified to these areas.

- 6.5.28. As I see it, the shed will provide for existing livestock and provide overwintering but does not preclude the future winter grazing if best practice in line with Good Agriculture and Environmental Condition which requires grazing at sustainable levels which is acknowledged by the applicant, cannot lead to either, under or over grazing. It cannot in my judgement be construed as intensification of grazing when the very reason is to accommodate reduced grazing.
- 6.5.29. Part 4 of the regulations controls the application of organic fertilizer and spreading of soiled water on land, including limits as to the amount and period of such land spreading and its separation distance from waterbodies. Compliance with these regulations would be sufficient to render the potential indirect effect on the European sites from the spreading of slurry from the development, either individually or in combination with other plans and projects, not likely and not significant. As a further safeguard, in the case of land spreading this is annually reviewed by standards set in regulation that are regularly reviewed in line with the specific programme- itself subject to an NIS. While individual projects may require a separate AA I do not consider the scale of development in this case warrants further assessment.
- 6.5.30. Therefore, the development would not be likely to have any significant effect on the Gweedore Bay and Islands SAC or the West Donegal Coast SPA
- 6.5.31. In view of the foregoing, it is reasonable to conclude on the basis of the information on the file, which I considered adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the European sites at Gweedore Bay and Islands SAC, Site no. 001141 or West Donegal Coast Site no. 004150 or any other European site, in view of the sites' Conservation Objectives. A Stage 2 Appropriate Assessment (and submission of an NIS) is not therefore required.

7.0 Recommendation

- 7.1. In accordance with the foregoing assessment I recommend that planning permission be granted based on the following reasons and considerations.

8.0 Reasons and Considerations

Having regard to the nature and extent, location and association of the proposed development within an established farm complex and landholding, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of its impact on residential amenity, traffic safety, its environmental impact and potential effects on nearby European sites, and would otherwise be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and lodged with the application, as amended by the further plans and submitted on the 25th September 2017, except as may otherwise be required to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed.

Reason: In the interest of clarity.

2. The slatted shed shall be used only in strict accordance with a management schedule which shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The management schedule shall be in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014, as amended, and shall provide at least for the following:

- (1) Details of the number and types of animals to be housed.
- (2) The arrangements for the collection, storage and disposal of slurry which shall be designed to minimise odour nuisance and disturbance emanating from the site.
- (3) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

Reason: In order to avoid pollution and to protect residential amenity.

3. All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the proposed and existing storage facilities and no effluent or slurry shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

Reason: In the interest of public health.

4. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.

Reason: In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

5. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. Slurry shall not be landspread on dune and *Machair* habitat or within Natura 2000 sites, except in areas that have been previously improved and where the spreading of manure has been traditionally practiced. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the

European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2014, as amended.

Reason: To ensure the satisfactory disposal of waste material, in the interest of amenity, public health and to prevent pollution of watercourses.

6. The access for the purposes of slurry management shall be via the access along the more western site boundary. Details of traffic access and management including safety measures shall be submitted for written agreement with the planning authority.

Reason: In the interest of residential amenity and orderly development.

7. Details of boundary treatment along the boundary with the dwelling to east shall be submitted for the written agreement with the planning authority prior to commencement of development and shall include details of a boundary in suitable material and planting scheme of indigenous species. All such works shall be completed within a year of commencement of use of the proposed shed.

Reasons: In the interest of visual amenity and orderly development.

8. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Suzanne Kehely
Senior Planning Inspector
11th July 2018