



An  
Bord  
Pleanála

## Inspector's Report ABP300355-17

### Development

- (a) Application for the retention of a sheep shed, feed passage, feed access, sheep dosing area and dip tank.
- (b) Permission to extend the shed, construct a retaining wall, yard pavement and two soiled water tanks.

### Location

Cloonnacartan, Recess, County Galway.

### Planning Authority

Galway County Council.

### Planning Authority Reg. Ref.

17/177.

### Applicant

David Burke.

### Type of Application

Planning Permission and Retention of Planning Permission.

### Planning Authority Decision

Grant.

### Type of Appeal

Third Party -v- Grant.

### Appellant

Patrick Cleary.

### Observers

None.

### Date of Site Inspection

8<sup>th</sup> March 2018

### Inspector

Paul Caprani.

# Contents

1.0 Introduction.....	3
2.0 Site Location and Description .....	3
3.0 Proposed Development .....	4
4.0 Planning Authority Assessment.....	5
4.1. Decision .....	5
4.2. Planning Authority Assessment of the Application .....	5
4.3. Further Information Response.....	6
5.0 Planning History.....	7
6.0 Grounds of Appeal.....	7
7.0 Appeal Responses.....	11
7.1. Response on behalf of the applicant. ....	11
8.0 Development Plan Provision.....	12
9.0 Planning Assessment .....	14
9.2. Preliminary Matters .....	14
9.3. Retention of the Sheep Dip, Dosing Area and Dip Pen.....	16
10.0 Appropriate Assessment .....	19
11.0 Conclusions and Recommendation.....	23
12.0 Decision .....	23
13.0 Reasons and Considerations .....	23

## 1.0 Introduction

ABP300355-17 concerns a third party appeal against the decision of Galway County Council to issue notification to grant retention of planning permission for a sheep shed, feed passage, feed access, sheep dosing area and a dip tank together with an application for planning permission to extend the shed, to construct a retaining wall, a yard pavement and two soiled water tanks. The development is located in the townland of Cloonnacartan, North Connemara, County Galway. The grounds of appeal argue that the proposed development will have an unacceptable impact on the environment through potential pollution and will also impact on the residential amenities of the area.

## 2.0 Site Location and Description

- 2.1. The appeal site is situated in a somewhat isolated rural area approximately half a kilometre to the east of the R344 Regional Road which runs along the eastern shores of Lough Inagh. The R344 links the village of Oughterard approximately 34 kilometres to the south of the site with the N59 National Secondary Route approximately 10 kilometres north of the site. The subject site is located at the end of a local narrow access road, which runs c.500 east of the lake to the site, which is elevated and overlooks the site. The appeal site is roughly rectangular in shape and occupies an area of just over 1 hectare. A local gravel access road runs adjacent to the northern boundary of the site and provides access to an existing sheep shed which occupies a floor area of approximately 160 square metres.
- 2.2. The remainder of the site to the south is under grass and incorporates a notable downward slope to the south. In the middle of the field which forms part of the subject site, c 50-60m south west of the shed, is a natural spring/well. This spring/well does not form part of the subject site. It is owned by the appellant who owns a holiday home adjacent to the northern boundary of the site.
- 2.3. In terms of surrounding settlement there is one house adjacent (the appellant's house - Derryclare Cottage) which is located adjacent to the northern boundary of the site. Access is provided via a separate entrance to the immediate north of the

access to the appeal site. The adjacent house is located approximately 60 metres west/north-west of the sheep shed. This is the closest dwellinghouse to the subject site. Another dwellinghouse is located further west/north-west on the eastern side of the access road. It is located approximately 200 metres away from the shed.

2.4. There are a number of small streams and drainage ditches in the vicinity of the subject site. Including a number of drainage ditches to the west and the east which drain southwards linking up with small streams which drain westwards into Lough Inagh. There are a number of other small stone sheds in the wider area some of which are derelict while others do not appear to be used.

### 2.5. **Designated Sites**

The subject site is sandwiched between the Maumturk Mountains SAC (site code 002008) which are located between 100m and 300m to the north, east and south of the subject site. The Twelve Bens/Garraun Complex SAC (site code 002031) which incorporates Lough Inagh, is located c.600m to the west of the subject site.

## 3.0 **Proposed Development**

3.1. Retention of planning permission is sought for the following:

- Retention of the animal housing (sheep) shed. This structure comprises of a concrete wall base with corrugated iron upper level and roof. It incorporates an asymmetrical A-pitched roof with a sliding shed door on the front elevation. It occupies an area of approximately 160 metres.
- Retention of planning permission is also sought for a feed passage area, a feed access and a sheep dosing area and dip tank all of which are located to the rear (east) of the existing shed. This development comprises of a series of passageways and holding areas confined within c.1.5 metre high concrete block walls and separated by metal agricultural gates. It occupies a total area of approximately 96 square metres.
- Permission is also sought to extend the shed in a northerly direction. According to the drawings submitted, the extension will occupy an area of approximately 84 square metres. It will result in a symmetrical A shaped shed with an optional rear door on the eastern side of the structure. The building

will remain the same height (5.52 metres in height) and will incorporate the same external materials and finishes to match the existing shed.

- Permission is also sought to construct a retaining wall along the northern side of the shed. This wall is approximately 26 metres in length and it is also proposed to construct a new concrete yard between the shed and the retaining wall.
- The planning application notices also indicate that it is proposed to construct two soiled water tanks however on foot of additional information submitted it appear that one of the proposed tanks is to be replaced with a sump manhole to the northeast of the sheep pen.

## **4.0 Planning Authority Assessment**

### **4.1. Decision**

- 4.1.1. In its decision dated 3<sup>rd</sup> November 2017, Galway County Council issued notification to grant permission subject to 10 conditions.

### **4.2. Planning Authority Assessment of the Application**

- 4.2.1. The application was lodged on 16<sup>th</sup> February 2017.
- 4.2.2. A letter of objection from the current appellant Patrick Cleary was submitted in respect of the proposal, the contents of which has been read and noted.
- 4.2.3. The initial planner's report assesses the proposed development and notes that the design of the proposal is general keeping with the design and style of agricultural buildings in the wider area. It is noted that no information has been submitted in relation to the safe and satisfactory disposal of waste generated by the proposed development. It notes that water supply is provided via an existing connection to a private well.
- 4.2.4. The initial planner's report requests further information in relation to the following:
- It is noted that the application site is located less than 50 metres from the Maumturk Mountains candidate Special Area of Conservation. The Planning Authority is concerned regarding the potential for the development to have

adverse effects on this designated European site. It is requested therefore that the development be screened for the need to undertake a full appropriate assessment. Should the screening show that significant effects are likely on designated sites, a full appropriate assessment would be required. Under such a scenario the planning authority cannot issue retention of planning permission for the development as a substitute consent application would be required under the provisions of the Planning and Development Act 2010.

- The applicant is also requested to submit details of a nutrient management plan for the farm enterprise and the number and type of animals at this farm.
- The applicant is requested to submit evidence that there is adequate storage available for all agricultural effluent produced on the farm. This information should include details including dimensions of all tanks used to hold agricultural effluent. Evidence should also be submitted indicating that the proposal will comply with the Good Agricultural Practice Regulations.
- The applicant is requested to submit landbanks which will be used for the spreading of slurry and other agricultural effluents from this farm. Appropriate scale maps showing the fields which will accommodate the landspreading should be provided.

#### 4.3. **Further Information Response**

4.4. Further information was submitted on behalf of the applicant by Planning Consultancy Services on 10<sup>th</sup> October 2017. The information contained therein is briefly summarised below.

- An appropriate assessment screening report was submitted which sets out the legislative background and the methodology employed in the appropriate assessment screening. It also includes a screening matrix for appropriate assessment. It is not expected that the proposed development will give rise to any direct impacts on the Natura 2000 sites in question.
- A separate nutrient management plan was also produced by Tarpey and Associates. The nutrient management plan considers the proposed new shed and has specifically selected spreadlands for manure in order to avoid areas in close proximity to protected habitats. It is proposed to adhere to the

protocols set out in the Good Agricultural Practice Regulations. It is not expected that emissions arising from the development will result in any significant adverse effects on Natura 2000 sites in question. The submission also sets out details for well protection and the disposal of sheep dip effluent. Details of an acceptance letter for disposal of sheep dip is contained in Appendix C.

- Details of the proposed holding tank is also submitted.

#### **4.5. Assessment of Additional Information Submitted**

Following a review of the further information response, the planner's report recommends that the proposed development be granted subject to conditions as all the points of further information has been adequately addressed by the applicant. Galway County Council therefore granted planning permission and retention of planning permission for the development.

#### **5.0 Planning History**

There are no planning files attached. However, reference to relevant planning history is made in the planner's report and is briefly set out below.

Under Reg. Ref. 06/4824 planning permission was granted subject to conditions in November 2006, for the construction of animal housing (sheep) shed consisting of six pens, feed passage and feed access with adjacent dungstead storage facility and all associated services to the current applicant David Burke.

Under 16/1407 planning permission was granted to the appellant for alterations to the existing dwellinghouse to the west/north-west of the subject site. Permission was granted in October 2016.

#### **6.0 Grounds of Appeal**

- An appeal was submitted by Mr. Patrick Cleary the owner of Derryclare Cottage located approximately 60 metres west/north-west of the proposed development. The appellant is also the owner of a well which is c.50 metres downgradient of the sheep shed.

- The grounds of appeal state that notwithstanding the fact that substantial additional information was submitted on foot of a request of the Planning Authority, the appellant despite being an observer to the original application, was given no opportunity to comment on those plans and particulars prior to the granting of planning permission by the Planning Authority.
- The appellant states that prior to purchasing the cottage he had the well water analysed in 2014 and the water showed the presence of both coliforms and ecoli. The previous owner of the property brought this to the attention of the applicant who subsequently re-fenced the well. The appellant therefore completed the purchase in January, 2015. Work on the construction of the sheep dip and associated pens commenced in January, 2015. The sheep shed was used for the housing of sheep and all sheep were kept indoors. However, the use of the sheep dip and pens to hold large numbers of sheep for dipping/dosing has resulted in increased animal waste and use of chemicals. The appellant has no objection to the retention of the existing shed, feed passage and feed access provided that it is used for its original intended purpose as a sheep housing shed and there are adequate manure facilities and precautions to avoid any potential contamination of adjoining streams, drains and the appellant's wells.
- The appellant objects to the sheep dosing area and sheep tank for the following reasons.
- A scientific review prepared by Consultant Ecologist sets out the potential environmental hazards relating to sheep dips and such developments. This report is attached as an appendix to the grounds of appeal (Appendix B). This report argues that, had construction of the sheep dip not already taken place on site, any reasonable conclusion from an appropriate assessment screening report would have resulted in the relocation of the sheep dip and pen away from any streams or drains connected with the SAC, and away from any sloping and/or vulnerable lands which drain into streams and rivers. Unfortunately, this advice could not be given as the development had already been constructed and the planning application is for retention of permission. Given this situation, there is a likelihood of significant effects on the SAC specifically on salmon, otter and mesotrophic lakes which are all qualifying



interests of the Natura 2000 sites in the area. It is also suggested that the preventative measures proposed are more appropriate as mitigation measures and should be considered within the context of a Natura Impact Statement.

- The submission also highlights the human effects of sheep dip and extreme caution is required by anyone handling sheep dip. The chemicals in sheep dip are very harmful and toxic to aquatic life. Reference is made to various documents all of which highlight the need to locate sheep dip facilities away from watercourses, wells and streams.
- It is stated that the threat to the water supply is exacerbated by increased activity from large numbers of sheep being kept on a confined site with attendant chemical and organic odours as well as noise, flies and traffic etc. This, it is argued, will seriously affect the amenity of the appellant's property.
- It is suggested that the mitigation measures to be employed as indicated in the additional information submission in respect of sheep dip do not meet required protocols for example, rinsing liquid must be returned to the dip bath and this is not specified in the additional information submitted.
- The Appropriate Assessment Screening Report indicates that the applicant will construct three storm soakaways and roof soakaway to divert any run-off from the hardstanding area entering the stream via the surface water. Guidelines from the Department of Agriculture, Food and Marine states that spent dip must never be disposed of through a soak pit. The proposed sump connected to the storm's soakaway is not an acceptable method for the disposal of sheep dip.
- No evidence has been provided to support the contention that groundwater flow is unlikely to affect water quality in the well. No trial holes appear to have been dug to establish the soil depth between the shed and the sheep dip area and the well.
- With regard to the well protection, it is not clear how the slab in question could be constructed. Nor is there any evidence given as to how this would protect the well water from contaminated groundwater apart from the unsupported

statement that “*potential run-off from the subject shed and sheep dip area are unlikely to affect the water quality of the well*”.

- With regard to the extension of the shed, it is noted that the original shed was not constructed in accordance with the permission granted.
- It is also stated that the storage tanks associated with new farmyards should be located not less than 50 metres from any water body in the case of new farmyard and not less than 10 metres in the case of extension/modifications of the existing facility. The minimum distance between the storage facility and the public/private water supply source shall be 60 metres for new farmyards and this may not be reduced to less than 30 metres for existing farmyards subject to hydrogeological survey. In vulnerable situations this distance should be increased to 300 metres. The applicant objects to any increase in shed as this will facilitate a substantial increase in sheep activity with increased effluent as a consequence. The location or details of the storage facility were not provided in the planning application.
- It is also noted that the original application showed a shed storage capacity for 264 ewes while the information submitted with the additional information suggest that only 120 animals will be kept. The proposal also includes the possible provision for a new access rear door and this would create the potential for large number of sheep to be held in the enlarged shed, pending dipping. No information appears to be provided in the nutrient management plan for this level of activity.
- While the appellant has no objection to the construction of the retaining wall there is an objection to the increase in yard pavement as there is no purpose given for the proposed paving. Any increase in the commercial footprint around the sheep shed will affect the visual amenity of the appellant’s property.
- With regard to the proposed installation of the two soiled water tanks, inadequate information is available in relation to these tanks and their operation. It appears that one of these tanks has been replaced with a sump which ultimately leads to a soakaway and soakaways are not suitable for the

disposal of sheep dip. It is also noted that the site has a GSI vulnerability rating of "Extreme".

## **7.0 Appeal Responses**

### **7.1. Response on behalf of the applicant.**

7.2. A response was received on behalf of the applicant by Shane Joyce, Civil Engineer. It is briefly summarised below:

It is stated that the cottage is located 59 metres from the shed in question and the well is 56 metres downgradient from the well in question. The Board are requested to take into account that the sheep dip and pens were part of the site layout permitted. It is stated that the sheep are out on the mountain most of the time and not in the pen. The applicant is not required to provide more than due diligence to protect the appellant's well. Test results submitted by the appellant are to be totally expected in rural Ireland. The water quality can be easily treated to potable standards. All drawings were updated in accordance with advice given by the applicant's agricultural consultant. The appellant is correct in stating that the site engineer has added several details to the site layout plan in order to protect against contaminants. It is also acknowledged that very small quantities of any dip can contaminate large volumes of water and made it unfit for drinking. All sheep dip material used and unused is to be securely stored inside the farm building. The holding tank is solely for the collection of run-off from the sheep pen. The tank is correctly sized to retain the fluid until it is spread under Department of Agriculture Regulations. No sheep dip, used or unused is to be discharged into the holding tank. It is stated that Mr. Cleary's current septic tank house is to the south-west down the hill towards Mr. Burke's house.

It is stated that the well is accurately positioned in accordance with the survey. It is also suggested that the appellant's proposed new treatment plant and percolation area is to be positioned in a much more hazardous location just north of Mr. Burke's retaining wall near the sheep shed.

It is stated that the well is not a bored well it is a spring and the slab's only purpose is to deflect surface water away from the well.

It is acknowledged that sheep dip can cause poisoning for people and animals and can also mean a loss of drinking water supply possibly forever.

It is stated that the shed is substantially compliant with the permission and the Board are asked to note that only 19<sup>th</sup> century 6-inch maps were available at the time of the previous application. It is also stated that the new shed is on an old farmyard.

7.3. By way of conclusion it is stated that if the appellant was really concerned for his health he would simply bore a well at the back of his house. He has plenty of land where the supply would be much more abundant. It is also noted he has provided no test results since 2014.

#### 7.4. **Response of the Planning Authority**

It appears that Galway County Council have not submitted a response to the grounds of appeal.

### 8.0 **Development Plan Provision**

8.1. The site is governed by the policies and provisions contained in the development plan. The subject site is located in an area zoned for agriculture and is located in an area designated as landscape Class 4 (landscape Class 1 being the least sensitive and landscape Class 5 being the most sensitive).

8.2. Objective AFF1 relates to sustainable agriculture. The Council shall support the sustainable development of agriculture with the emphasis on high quality traceable primary production methods, promotion of local food supply and agricultural diversification.

8.3. Objective AFF4 relates to intensive agricultural development. The plan states that it will have regard to Section 256 of the Planning and Development Act (as amended) which amends the EPA Act 1992, regarding the control of emissions when assessing intensive agricultural developments.

8.4. Objective AFF5 relates to compliance with EU Habitats Directive. New agricultural projects that may potentially affect Natura 2000 sites, individually or in combination with other plans or projects shall be subject to appropriate assessment to ensure that there are no likely significant effects on the integrity of any Natura 2000 sites in the County.

8.5. Section 13.10 of the development plan relates to Guidelines for Agriculture, Mariculture, Forestry and Extractive Development. In relation to agricultural buildings it is stated that in dealing with planning applications for such buildings the Planning Authority will have regard to:

- The quality of design and layout of the farm complex. Where possible new buildings shall be located within the adjoining and existing farmyard complex, buildings shall be of minimum scale and use of muted coloured materials will also be encouraged.

The Planning Authority will also have regard to:

- Residential amenity.
- The safe access of the public roads.
- The assimilation of buildings into the rural landscape.

8.6. DM Standard 34 relates to agricultural effluent. The European Union (Good Agricultural Practice for the Protection of Waters) Regulations set out the requirements for storage of farm effluents and the minimum holding periods for storage of farm wastes. All soil liquid waste shall be collected before being further treated or spread on land in suitable weather conditions. The following will be requirement of planning permission.

- Design calculations.
- Design calculations supporting the selection of a particular volume of storage and details of the spread area.

8.7. **SI 36 – Department of Agriculture and Food – Minimum Specification for Sheep Dipping and Handling Facilities**

8.7.1. These Guidelines state that the siting of such facilities shall be selected to suit the purpose. Consideration being given to ease of handling of sheep, proximity to main sheep grazing area of the farm, most importantly it should be located as far as possible from water courses, springs, boreholes or drainage systems which could become contaminated.

- 8.7.2. Sheep dipping facilities shall not be installed inside/under a roof structure. For grant aid purposes the area limit for sheep handling and dipping units is 0.8 square metres per head.
- 8.7.3. By its nature sheep dip is formulated to kill parasites, and if allowed to enter watercourses, even in small quantities, it can cause fish and invertebrate kills. Even more seriously, these chemicals are very harmful if they contaminate drinking water supplies, either from springs, boreholes or for direct supply, as they can attack the human nervous system. Sheep dip shall be handled in accordance with manufacturer instructions.
- 8.7.4. In terms of layout and design, the layout should ensure that the minimum amount of pens necessary shall be installed to carry out the various tasks. The layout shall facilitate the free movement of the operator from pen to pen.

## **9.0 Planning Assessment**

- 9.1.1. I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal. I consider the major issue before the Board relates to whether or not the proposed retention of the works undertaken together with the works proposed would pose a threat to groundwater and surface water in the area and more specifically would pose a threat to the qualifying interests of Natura 2000 sites in the area and pose a pollution threat to the existing well located south-west of the shed.

## **9.2. Preliminary Matters**

- 9.2.1. As a preliminary matter the appellant raises the matter of the circulation of additional information submitted to the Planning Authority in accordance with Article 33 of the Planning and Development Regulations 2001. It appears that the additional information submitted and received by the Planning Authority on 10<sup>th</sup> October, 2017 was not circulated to the appellant for comment notwithstanding the fact that an observation was received by the Planning Authority by the appellant. I fully acknowledge that it would have been appropriate to circulate the additional information in the interests of natural justice. However, it is apparent from the grounds of appeal that the appellant viewed and evaluated the additional information

submitted therefore I am satisfied that the appellant's case has not been prejudiced in any way as the appellant took it upon himself to ensure that all information contained on file was consulted in the course of drawing up the grounds of appeal to An Bord Pleanála.

- 9.2.2. With regard to the more substantive matters raised in the grounds of appeal, I note from the grounds of appeal that there is no objection to the retention of the existing shed, feed passage and feed access subject to it being used solely for its original intended use. In relation to this matter I would highlight to the Board that any permission conferred on the shed will be for the stated use only namely a shed for the housing of sheep and any other use that does not fall under the provision of Exempted Development Regulations would not be deemed to be authorised. Therefore, the shed in question can only be used for its original intended purposes.
- 9.2.3. I also note secondly that the appellant has no objection to the proposal provided adequate manure facilities are provided at the subject site. Having inspected the site, I did not encounter any specific sealed areas or tanks which are specifically earmarked for the storage of manure facilities. However, the Board will note that I did not inspect the existing shed as it was locked at the time of site inspection. I do note however that Condition No. 8 of the Planning Authority's notification to grant planning permission requires compliance with S.I. 31 of 2014. Part 2 of these Regulations set out details required for the capacity and storage facilities for manure to be incorporated on site. Section 12 of the said Regulations also specifies facilities for manure making particular reference to deer, goats and sheep. It includes a requirement that all effluent be collected and held in a manner that prevents run-off or seepage directly or indirectly to groundwater or surface waters of such substances. As a result of my site inspection I cannot categorically conclude that such manure storage facilities are provided on the site in question. However, I do note that it will be a requirement of the Planning Authority's notification to grant planning permission that such facilities are put in place. If the Board are minded to grant planning permission in this instance, I recommend that a similar condition be attached.

### 9.3. Retention of the Sheep Dip, Dosing Area and Dip Pen

9.3.1. The applicant expresses significant concerns in relation to the retention of the sheep dosing area and dip tank. The main issues related to:

- The potential contamination of nearby streams, watercourses and ditches.
- The possible contamination of the groundwater spring/well located c.50 metres to the south-west of the shed and sheep dosing area.
- There were also some concerns raised in the Consultant Ecologist's Report submitted with the grounds of appeal in respect of the appropriate assessment undertaken as part of the proposal and this would be dealt with in a separate section below under the heading "Appropriate Assessment".

9.3.2. Having inspected the site, I would have significant concerns in relation to the retention of the sheep dosing area and dip tank, as built, to the rear of the existing shed. It is noted in the grounds of appeal and indeed acknowledged in the applicant's response to the grounds of appeal, that the chemicals and toxins used in sheep dip can be highly dangerous and potent to aquatic life and to humans where it enters the drinking water. The toxins used in sheep dip and irreparably damage drinking water supply. It is specifically formulated to kill parasites and if allowed into watercourses even in small doses can cause significant fish and invertebrate kills. S.I. 136 of May 2007 prepared by the Department of Agriculture and Food highlights the fact that "*these chemicals are very harmful if they contaminate drinking water supplies either from springs, boreholes or for direct supply as they can attack the human nervous system*". Having regard to the potency of the sheep dip, I would consider that a highly precautionary approach should be adopted in assessing the potential impact, particularly having regard to the proximity of a well downstream.

9.3.3. I refer the Board to the photographs attached to my grounds of appeal. It is apparent that the area containing the sheep dosing area and dip tank are not appropriately sealed. In fact, there are designated gaps in the wall in close proximity to the sheep dip which allows for surface water run-off out of the dosing area and dip tank. My site inspection found evidence of surface water run-off and contamination in the vicinity of the existing sheep pen for which retention of planning permission is currently sought. Specifically, I would refer to Photographs 7 and 9 attached. There are also



metal gates within the sheep pen whereby effluent discharge can readily escape. The fact that the pen and the main opening incorporated in the walls of the pen are located on the eastern side of the structure permits a direct route to the adjacent watercourse which runs along the eastern boundary of the site. This drainage ditch/stream provides a direct conduit to larger watercourses in the area which flow westwards into Louth Inagh. The drainage ditch in this instance is located just over 10 metres from the sheep dip and sheep dipping pen and there is a severe and significant slope leading from the pen to the adjacent drainage ditch/stream thus a direct and efficient pathway exists between the pen for which retention is being sought and the adjacent stream.

- 9.3.4. Furthermore, I note from the drawings submitted with the application that it is proposed to provide two soakaways downstream of the sheep pen. This in my view also presents a significant threat to groundwater as the openings in the pen are located c.10 metres away from the soakaway areas. Highly toxic effluent from the pen, as currently constructed, could pose a significant threat to the groundwater well located further to the south-east. The fact that the subject site is located in an area designated as “extreme” in terms of groundwater vulnerability, significantly exacerbates the potential impact.
- 9.3.5. The applicant’s proposal to incorporate surface water deflectors on the well in my view would not be sufficient to ensure that water from the well does not become contaminated from discharge from the sheep pen.
- 9.3.6. Evidence has been presented by the appellant which indicates that chemical analysis of water from the well in 2014 exhibited concentrations of coliforms and ecoli which are consistent with organic pollution. It is apparent therefore that contamination of the water supply has been a problem in the past and there is nothing to suggest based on the structure which has been constructed on site and incorporates numerous gaps in the walls will do anything to alleviate the threat of contamination of the water supply. I would reiterate that the threat is all the more apparent from the use of highly toxic chemicals and the sheep dipping facility.
- 9.3.7. While the guidelines S136 do not specify minimum separation distances, it clearly and unambiguously states that “sheep dipping facilities should be located as far as possible from watercourses, springs, boreholes or drainage systems”.

- 9.3.8. The ecologist's report submitted with the grounds of appeal also makes to UK Guidelines that require sheep dips and baths to be located at a minimum of
- 10 metres from any stream.
  - 50 metres from any well, spring or borehole.
  - 30 metres from any watercourses that forms part of a designated European site.
- 9.3.9. While the location of the sheep dip in this instance meets all the above criteria (albeit marginally), the fact that the facility for which retention is sought is located on very steep lands with steep gradients to both the watercourse and the well in question together with the fact that having inspected the site, I noted that there are significant wetland areas within the field which could be readily contaminated from discharge from the sheep dip and the fact that the well in question is most likely served by an artesian type spring as opposed to a deeper groundwater source. All of these facts in my view would give rise to pollution concerns. I would therefore suggest to the Board that the minimum separation distance set out in the UK Guidelines is not sufficient in this instance to ensure that both surface waters and groundwaters in the immediate area are adequately protected.
- 9.3.10. The fact that the subject site is located in an upland area along the west coast which experience high levels and high intensity of rainfall will also accentuate the potential for increased surface water run-off from the sheep pen into surrounding watercourses.
- 9.3.11. In conclusion therefore and having inspected the site, I consider the sheep pen as constructed, is not fit for purpose so as to ensure that all chemicals and organic waste can be adequately contained within the structure and therefore development as constructed presents a real and significant pollution threat to surrounding watercourses and to the well located to the south-west of the subject site.
- 9.3.12. Furthermore, I consider that there is a lack of clarity with the drawings submitted. No detailed drawings have been provided in respect of:
- The sheep dipping pen.
  - The sheep holding area.

- 9.3.13. No details have been provided in relation to height and structural integrity of the retaining wall proposed on site and no details have been provided in relation to the replacement of one of the proposed holding tanks with a sump/manhole. No surface water drainage calculations have been submitted in respect of the proposed holding tank for surface water run-off. It has not been demonstrated that the reduction in the number of holding tanks for surface run-off from 2 to 1 is sufficient to cater for any run-off associated with the agricultural activity.
- 9.3.14. Arising from my assessment above therefore I consider that the Board should consider refusing retention of planning permission for the proposed development.
- 9.3.15. The other major issue raised in the grounds of appeal relates to potential impact on residential amenity. Having inspected the site, I note that the site does not generate significant levels of odour or noise as suggested in the grounds of appeal. Furthermore, the subject site is located in a rural area where agricultural activity prevails. It is appropriate that agricultural activity including the rearing and maintenance of livestock, in this case sheep, would be accommodated in the lands in question. It would be wholly inappropriate in my view to refuse planning permission for an agricultural activity in a rural area on the grounds that such activity would give rise to modest levels of noise and odour generation. What is proposed in this instance is not intensive agricultural development which could potentially have a significant material impact on surrounding amenity.

## 10.0 **Appropriate Assessment**

10.1. The subject site is located in close proximity to two Natura 2000 sites. The closest Natura 2000 site is the Maum Turk Mountains SAC which is located to the north-east and south of the subject site. The boundary of this SAC lies between 100 and 300 metres from the appeal site. The features of interest associated with this SAC include:

- Oligotrophic waters containing very few minerals on sandy plains.
- Northern Atlantic wet heaths with erica petralix.
- Alpine and boreal heaths.
- Blanket bogs.

- Depressions on peat substrates with rhynchosporion.
- Siliceous rocky slopes with chasmophytic vegetation.
- Salmon.
- Slender naiad.

10.2. The Twelve Bens/Garraun Complex SAC is located approximately 600 metres to the west of the subject site. For the purposes of appropriate assessment, the latter Natura 2000 site is probably the most important in terms of assessing the potential impacts. The subject site is located in an upland area which slopes down towards the lough and as a result there is a direct hydrological link between the subject site and the stream/drainage ditches in the vicinity of the subject site and the Twelve Bens/Garraun Complex SAC. The features of interest associated with this SAC are as follows:

- Oligotrophic waters containing very few minerals of sandy plains.
- Oligotrophic to mesotrophic standing waters with vegetation of the littorelletea uniflorie and/or isoeto-nanojuncea.
- Alpine and boreal heaths.
- Blanket bogs.
- Depressions on peat substrates of the rhynchosporion.
- Siliceous scree of the montane to snow levels.
- Calcareous rocky slopes with chasmophytic vegetation, siliceous rocky slopes with chasmophytic vegetation,
- Old sessile Oakwoods with illex and blechnum in the British Isles.
- Fresh water pearl mussel.
- Salmon.
- Otter.
- Slender naiad.

10.3. On foot of a further information request the applicant submitted an appropriate assessment screening report. The screening report sets out the legislative

background methodology together with a Stage 1 screening for appropriate assessment which sets out details of the plan or project, the existing environment and a brief description of the Natura 2000 sites which may be affected. It sets out detailed and conservation objectives of the Natura 2000 sites and the management plans which have been published in respect of the Natura 2000 sites. It also details an ecological survey for the site. It concludes that provided the landowner follows directions set out in the Nutrient Management Plan (also submitted as additional information) and follows the Guidelines set out in the Good Agricultural Practice Regulations, it is not expected that emissions arising from the development will result in any adverse impact effects on Natura 2000 sites in question. The screening report goes on to set out a series of protection measures which have been identified to safeguard watercourses and the shallow well located within the vicinity.

- 10.4. The Board will note that it is inappropriate to include mitigation measures as part of the evaluation process in a Stage 1 Appropriate Assessment screening exercises. Appropriate Assessment is best carried out on a stage by stage process. The first stage involves identifying whether or not a proposed plan or project could have a significant effect on European sites in the vicinity. Where is found that a plan or project could potentially have a significant effect, this automatically triggers a Stage 2 Appropriate Assessment and the production of a Natura Impact Statement.
- 10.5. The problem arising in this particular instance, is that if such a procedure was followed in the case of the current application for retention, and a conclusion was arrived at that a Stage 2 Appropriate Assessment was required, this would trigger the need for a Substantial Consent application as opposed to an application for retention of planning permission.
- 10.6. Furthermore, the Appropriate Assessment Screening Report submitted by way of additional information arrives at a qualified conclusion that "*provided the landowner follows the directions and guidelines set out in the Good Agricultural Practice Regulations..... it is not expected that emissions arising from the development will result in any significant adverse effects on Natura 2000 sites in question*". It is clear from my site inspection that the works undertaken on site are not in my view constructed in accordance with the requirements of the Good Agricultural Practice Regulations in that the Regulations require that all effluent is confined within the sheep pen and that under no circumstances can any effluent be permitted to leak or

be discharged outside the confined area. It is obvious and apparent from my site inspection that in this instance there are a number of openings within the pen which permits effluent to be readily discharged out of the pen which includes a sheep dip facility. The qualifying interests associated with the Twelve Bens/Garraun Complex SAC include a number of aquatic species such as a freshwater pearl mussel and the otter which are extremely sensitive to changes in water quality. Furthermore, as already mentioned previously in my report, the nature of the chemicals used in sheep dip are particularly virulent in terms of their toxic nature. The proposed structure for which retention is being sought therefore has potential to have a significant effect on the qualifying interests associated with this SAC having regard to the site's close proximity to watercourse which provides a direct hydrological connection with the SAC in question.

- 10.7. Furthermore, the development for which retention of planning permission is being sought has further potential to adversely impact on qualifying interests associated with the SAC due to organic pollution associated with the sheep pen. Such nutrient rich organic pollution has potential to adversely impact on the trophic status of the oligotrophic and mesotrophic lakes that occur in the area. The site synopsis for the SAC notes that there is a suite of lowland lake that encircles the mountains which is likely to include Lough Inagh and these represent some of the finest oligotrophic lakes in the country where it is noted that two rare plant species slender naiad and pilworth occur. Thus discharges and seepages of nutrient rich effluent from the sheep pen would in my view have the potential to damage the sensitive trophic status of the lakes in question.
- 10.8. Arising from my assessment above therefore I consider that the development for which retention of planning permission is sought has the potential to adversely affect the integrity of a number of the qualifying interests associated with the Twelve Bens/Garraun Complex SAC.
- 10.9. Thus on the basis of the information provided within the application and appeal and in the absence of a Nature Impact Statement the Board cannot be satisfied in my opinion, that the propose development individually or in combination with others plans and projects, would not be likely to have a significant effect on the Twelve Bens/Garraun Complex SAC (Site Code: 002031) or any other European site in view

of the site's conservation objectives. In such circumstances the Board is precluded from granting retention of planning permission.

## **11.0 Conclusions and Recommendation**

Arising from my assessment above therefore I consider that the Board should overturn the decision of the Planning Authority in this instance and refuse planning permission for the proposed development on the grounds that the works undertaken on site represent a significant and material pollution threat to the existing well/spring which is used as a source of drinking water in the vicinity of the site and the works undertaken as constructed could potentially adversely impact on the integrity of European sites in the vicinity namely the Twelve Bens/Garraun Complex SAC.

## **12.0 Decision**

Refuse planning permission for the proposed development based on the reasons and considerations set out below.

## **13.0 Reasons and Considerations**

1. It is considered that the application for the retention of the sheep shed, feed passage, feed access, sheep dosing area and dip tank together with the permission to extend the shed together with other works including the retaining wall, yard pavement and water holding tank would represent a serious threat to watercourses in the vicinity by reason of increased pollution. Furthermore, it is noted that the site is located in close proximity to an existing domestic well/spring which serves as a potable water supply for a dwellinghouse in the vicinity. It is considered that there is a likelihood of pollution of the well/spring through the contamination of surface water and groundwater arising from contaminated discharge arising from the development. It is considered therefore that the proposed development would be prejudicial to public health.

2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on European Site Code: 002031 – the Twelve Bens/Garraun Complex SAC or any other European site, in view of the site’s conservation objectives. In such circumstances the Board is precluded from granting planning permission and retention of planning permission for the works in question.

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Paul Caprani,  
Senior Planning Inspector.

26th March, 2018.