



An  
Bord  
Pleanála

## Inspector's Report ABP-302065-18

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<b>Development</b>	New dairy farmyard, extensions to existing yard and entrance
<b>Location</b>	Castle Farm, Castlelands and Glenmorriseen, Lismore County Waterford
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	1888
<b>Applicant(s)</b>	PCG Agri.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	1. Patrick Joseph Bennett 2. John and Marie Howard
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	5 <sup>th</sup> of November 2018
<b>Inspector</b>	Caryn Coogan

## 1.0 Site Location and Description

- 1.1. The site is located outside of the heritage village of Lismore, Co. Waterford, to the west of the village. The site is located within a large farm holding called the Lismore Castle farm of 270hectares. It is an undulating topography of farmland, which currently supports grazing for a small number of livestock and some crop growing. There are two existing farmyards within the landholding, one is the Castle farmyard located adjacent to Lismore Castle, and the second one is the Top Yard, located north of the N72. Both existing farmyards are accessed via a minor road serving the Lismore GAA grounds, the soccer grounds and a dwelling to the east of the landholding. The entire landholding is to be leased for farming, however the yard at Lismore Castle is not included in the lease or the lands subject of this application, and it will be decommissioned due to the proximity to the Castle.
- 1.2. The existing Top Yard, consists of old stone buildings, slatted units, livestock and machinery houses, and a large silage pit. There is a large two storey dwelling adjoining the Top Yard along its western site boundary. This dwelling has commanding views over the landholding to the south and west. The farmyard is well screened from public view due to its considerable setback from the N72, and mature ingenuous trees along the access road. The GAA and soccer sports fields are located to the south east of the Top Yard.
- 1.3. A new farmyard is proposed on a greenfield site, south west of the Top Yard, on a lower gradient. The subject site for the new farm yard called Battle Yard, will be accessed from an existing road/ farm entrance off Glencairn Road along the southern axis of the landholding. The subject site for Battle Yard is half of a large field, which has mature hedgerows along the northern, western and eastern site boundaries. The field is currently under grass and has no direct access onto the Glencairn Road.
- 1.4. Glencairn Road is a sylvan road with some fine examples of mature indigenous trees aligning the road on both sides. The picturesque road also has low stone walls on approach to the village. There are not many one-off houses within the site area.

There are 3No. houses positioned in the general region of the Battle Yard site, these are in excess of 300metres from the proposed Battle Yard.

- 1.5. The large Fortwilliam estate is to the west of the landholding. One of the current applicants is also involved with farming the Fortwilliam estate.

## 2.0 **Proposed Development**

2.1. PCG Agri. has applied for planning permission for the following:

- (i) Construction of modifications to widen and improve sightlines at an existing entrance;
- (ii) Construction of farmyard accessways;
- (iii) Construction of a milking parlour, dairy and ancillary rooms, livestock waiting yards, handling facilities and underground slatted tanks;
- (iv) Erection of external milk tank, meal bins and water storage tanks;
- (v) Silage pit;
- (vi) A cubicle facility and underground slatted tanks;
- (vii) Unroofed, underground slurry tank
- (viii) Modifications to existing livestock buildings to include infill of cubicles and feeding area;
- (ix) 3No. extensions to existing livestock buildings to include of roofed underground slatted tank, feed area and cubicles and feeding area;
- (x) Extension to existing silage slab and all associated site works.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

The planning authority granted the proposed development subject to 8No. conditions:

- (1) Compliance with plans and particulars and conditions attached to permission; Farm access road to be in accordance with Drawing No. 102 identified as Option 4.
- (2) Development Contribution payable of €45,645
- (3) Excavated material to be reused on site, or if it is to be removed the Environment Section must be informed.
- (4) Entrance requirements
- (5) Foul effluent
- (6) Surface water
- (7) Buildings to be green/ dark grey
- (8) Trees to be retained, and on-site planting to be provided.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

##### 26<sup>th</sup> of March 2018

- The proposal represents a significant increase in the existing farm. The national dairy herd must grow to reach Department's Milk targets.
- The expansion of the existing Top Yard for dairying has been discounted due to topography. The subject site is chosen due to its central location on the landholding.
- Both yards will be linked by a road.
- Roads Design has no issue with the entrance.

##### 12<sup>th</sup> of June 2018

Option 4 is the most suitable road access because it serves an existing trackway and reduces potential impacts on existing residences. The development is consistent with development plan objectives for the area. A permission is recommended which is in line with the planning authority's decision to grant.

### 3.2.2. Other Technical Reports

Area Engineer: the layout is acceptable;

Heritage Officer: Satisfied with the mitigation measures, the proposal will not affect the SAC.

### 3.3 Further Information requested on 13<sup>th</sup> of March 2018, requested a revised entrance to minimise impact on the dwelling located across the road, asking whether the Top Yard was part of the selection process, traffic movements, and archaeological material.

The further information response was received by the planning authority on **18<sup>th</sup> of May 2018**, with the planning report recommending permission on 12<sup>th</sup> of June 2018.

### 3.3. Prescribed Bodies

Department of Culture, Heritage and Gaeltacht submitted a letter dated 13<sup>th</sup> of March 2018. It recommended an Archaeological Impact Assessment be submitted by way of Further Information.

Department of Culture, Heritage and Gaeltacht had the further information referred to it in May 2018. The response stated the spreading of slurry was a concern.

### 3.4. Third Party Observations

Two objections received from residents in the area (the third-party appellants)

- Traffic
- Smells
- Site Selection/ alternative options
- Impact on residences
- Mapping

## 4.0 Planning History

There is no relevant planning history.

## 5.0 Policy Context

### 5.1. Development Plan

Waterford County Development Plan 2011-2017 is the relevant plan, it has its lifetime extended, as per Section 11A of the Planning & Development Act 2000 (as amended) and will remain in effect until the new Regional Spatial & Economic Strategy is made by the Southern Regional Assembly, thereafter a new City and County Development Plan will be prepared.

The site is zoned **Agriculture**: To provide for the development of agriculture and to protect and improve rural amenity.

**6.7.1** sets out the Agricultural Development Policy. New agricultural buildings are acceptable in principle subject to the overall nature and scale of the development being acceptable to the Planning Authority along with traffic and environmental considerations.

The Council will normally permit development proposals for agricultural development where:

- (a)** They are appropriate in nature and scale to the area in which they are located;
- (b)** The proposal is necessary for the efficient use of the agricultural holding or enterprise;
- (c)** Where the proposal involves the erection of buildings, there are no suitable redundant buildings on the farm holding which would accommodate the development;
- (d)** The development is not visually intrusive in the local landscape and, where the proposal is for a new building(s) and there are no suitable redundant buildings, the proposal is sited adjacent to existing buildings and suitably visually integrated in the holding; and
- (e)** The proposal demonstrates that it has taken into account traffic, environmental and amenity considerations and is in accordance with the policies, requirements and guidance contained in this Plan.

The site is located within a National Monument Zone.

The site is located in a **Sensitive** classification in the **Scenic Landscape Evaluation** outlined in **Appendix A9**. Sensitive is Distinctive character with some capacity to absorb a limited range of appropriate new developments while sustaining its existing character.

## 5.2. Natural Heritage Designations

A Natura Impact Statement has been submitted with the planning application.

The site is located within the Blackwater (Ballyduff) Fresh Water Pearl Mussel Catchment Area.

The site is 0.16 South of blackwater River (Cork/ Waterford) SAC Special Area of Conservation (Site Code : 002170 Version 1.06)

The site is 0.31 km South of Blackwater Callows SPA Special Protection Area (Site Code :004094 Version 1.02).

Waterford County Development Plan 2011-2017 (as extended)

### 8.5 Water Quality

European and Irish legislation continue to place a strong emphasis on achieving a high standard of water quality. The Water Framework Directive, which was adopted in 2000, required that “*good status*” is achieved in all water bodies by 2015. The eutrophication of rivers, lakes and tidal waters is one of the main threats to surface waters with agricultural runoff and municipal discharges being the key contributors.

Under the Water Framework Directive a management plan must be prepared for all River Basin Districts (RBDs). Districts (RBDs). The South Eastern RBD encompasses most of County Waterford while the Blackwater River is covered in the South Western RBD. The final plans were adopted in May 2010 and outline the current status of our waters, environmental objectives for our waters, and the programme of measures which may be necessary in order to achieve these objectives. The Program of Measures includes a list of specific measures for the Freshwater Pearl Mussel where it is evident that particular environmental conditions require restoration to restore the pearl mussel to favourable conservation status. There are three Freshwater Pearl Mussel Catchments in the County; the River Clodiagh, the River Blackwater and the River Licky.

The EU Nitrates Directive (91/676/ECC) requires member states to take specific measures to protect surface water and groundwater from nitrate contamination from agricultural activities. A Farm Waste Management Scheme introduced in 2006 provided grants to farmers to meet their slurry storage requirements and it is now the responsibility of individual farmers to ensure that they are compliant with the Good Agricultural Practice Regulations.

Nitrates Regulations have been signed into law by the Minister for the Environment, Heritage and Local Government in 2009. The European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 revise and replace the previous Regulations made in 2006 and 2007. They provide for strengthened enforcement provisions and for better farmyard management.

### **Policy ENV 7**

It is a policy of the Council to comply with the objectives, policies and Programme of Measures of the Water Framework Directive and the South Eastern and South Western River Basin District Management Plans.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.2 Appellant No. 1 : Patrick Joseph Bennett cites the following grounds:

- Grasstec on behalf of the applicant produced reports outlining Key Parameters which were critical in choosing the site for the new farmyard referred to as 'Battle Yard' because the site is away from houses, Lismore Castle, to minimise visual, noise and odours, and central to the grazing cows. Grasstec used Google maps to support its case. The maps used in the planning application are not as accurate as OS maps. From the OS mapping, the existing farmyard is the optimum site for cow walking distances. The appeal submission also suggests an alternative site based on Grasstec requirements. PCG Agri. has used misleading information and mapping to present its case and the planning authority accepted it. The only criteria the applicants have achieved is that they have moved the development away from Lismore Castle.



- In the further information response PCG Agri. altered the site boundary to accommodate revisions to the internal network of paths. Altering the site boundary requires a new planning application.
- Fortwilliam estate is directly west of the PCG Agri. application. The estate is leased to one of the leading shareholders in PCG Agri. The cattle paths extend right up to the boundary with the Fortwilliam estate. It is considered the lands will be used to increase the herd size and milking capacity at 'Battle Yard', which would have serious implications in terms of odour pollution for residents along Glencairn Road and contravene conditions on the planning permission.
- The applicants did not approach the residents of Glencairn Road prior to making the application. The open slurry pit will result in significant odour. Windows will have to be kept closed and the residents will not be able to dry their clothes. There are more appropriate locations on the vast holding for the yard. The scale and hours of operation will impact negatively on the residents of the area.

6.3 John and Marie Howard have also submitted a third-party appeal, the following are their grounds of appeal:

- **Scale and Intensity of development:** There proposed development primarily at the 'Battle Yard' is located next to the Glencairn Road and relatively close to the N72 road and CBS Secondary School. It is a large-scale dairy enterprise which will impact negatively in terms of visual, noise/ hours of operation, odours and lighting on the neighbouring houses, GAA, soccer and cricket pitches, the CBS Secondary School and the heritage town of Lismore (1.5km)
- **PD Entrance:** The proposed entrance will be a traffic hazard. The entrance will see a large increase in traffic. The local road is very scenic and is used by walkers and cyclists due to its proximity to Lismore. Point 6 of the further information response states the applicant will no longer be using one alternative entrance adjacent to the landlord's residence. It is obvious the vast majority of the farm traffic is being diverted to the Glencairn Road. There

is a bend in the road west of their dwelling and in close proximity to the proposed entrance, and this is a potential risk to road users.

- **Internal roadway:** The applicants did not consult with the residents before applying for planning permission. The planning authority have granted option 4 which will have an adverse impact on their quality of life due to vehicles on the internal road during the summer time in particular with dust and noise levels. The milk trucks will pass their property about 600times per year.
- **Foster Carers:** As foster carers the appellants provide a safe and quiet environment for children with high needs. The scale of the proposed development will have a severe negative impact on the vulnerable children in their care. The proposed 'Battle Yard' is only 300metres from their home.
- **Lismore Heritage town:** The beautiful tract of land close to the heritage town should remain undisrupted and undisturbed from large scale farming enterprise. The appellants are not opposed to farming on the land but are opposed to the sheer scale of the development adjacent to Lismore Castle and town.
- **Agricultural emissions:** EPA states the significant driver for increased emissions between 2015-2016 where due to high dairy cow numbers, which were up 6.2% compared with 2015, which will ultimately impact on the environment.
- **Applicants mapping and battle yard site:** The neighbours technical assessment ( Patrick Joseph Bennett) of the proposed site is fully supported and the Board should examine these and ask why alternative sites were ruled out.

## 6.2. Applicant Response

Applicant's response to the two third party appeals.

- All walking distances illustrated in the planning application are correct. Grasstec has been mapping and designing farm paddock layouts for over 20 years with over 400 clients. The maps submitted with the planning application were based GPS survey completed of the entire Lismore estate. An aerial

photograph was superimposed over the GPS generated maps to improve visualisation. A fixed cow path is required when operating a paddock grazing system as per Best Practice recommendations. The cow paths determine the location of the new farmyard.

- The planning authority requested the revision to the proposed site boundaries to accommodate revisions to the access.
- PCG Agri. has two shareholders, Pat Ryan, Cappagh and Shane Maxwell, Lismore. They both have their own farms which they will continue to farm. A long-term lease has been agreed between the applicants and the owners of the Lismore estate. David Evans owns Fortwilliam Estate and is farming it in partnership with Shane Maxwell. Shane Maxwell's calves and heifers destined for his own farm in Moorhill are reared at the Fortwilliam estate. The lands at Fortwilliam support his own farm and do not form part of the proposed development.
- More than adequate distances have been provided between the proposed farm and existing residences.
- In the event the appeal is upheld it will set a precedent for all agricultural development in rural Ireland. Food Harvest 2020 and Food Wise 2025 targets will be achieved. If agricultural development cannot take place in rural Ireland where can it take place.
- *Dairy Farm Infrastructure Handbook*, by Teagasc, July 2017 was submitted with the response.

### 6.3. Planning Authority Response

It is not the planning authority's role to ascertain whether there are more suitable sites on the landholding to accommodate the proposed development. The planning authority is satisfied the development of a new farmyard is sustainable and in accordance with proper planning and development of the area. The revision of site boundaries was deemed to be acceptable to the planning authority, as the planning authority had requested these revisions to be incorporated into the development.

## 7.0 Assessment

7.1. The following are the headings I will assess this appeal under:

- Development Plan and policies
- Potential impact on residences in the area
- Appropriate Assessment

## 7.2 Development Plan and Policies

The proposed development involves the modest expansion of an existing farmyard referred to in the application documentation as the 'Top Yard' and the construction of a new farmyard referred to as 'Battle Yard' within the Lismore Estate. The large landholding is to be leased on the long-term by the applicants for dairy farming. It includes is 270Ha which is mainly pasture land, and the proposed herd size for the landholding is:

540 No. Cows;

103 No. 1-2 year olds

103 No. 1 year olds

The existing farmyard, Top Yard, is located on a higher position within the undulating topography of the estate. The Top Yard is accessed from a laneway close to Lismore village off the N72, that also serves the local GAA club, soccer and cricket club and the old Castle Yard (which is to be decommissioned and is not included in the lease of the landholding). The new proposed farmyard, Battle Yard, is located within a hallow in the landholding on undeveloped countryside and which is accessed further west of Lismore village from an existing agricultural entrance off Glencairn Road.

The landholding/ subject site has an established agricultural use, therefore the proposed agricultural developments are as appropriate use for this rural area.

The development plan states under **6.7.1 Agricultural Development Policy.:**

*New agricultural buildings are acceptable in principle subject to the overall nature and scale of the development being acceptable to the Planning Authority along with traffic and environmental considerations.*

*The Council will normally permit development proposals for agricultural development where:*

- (a) They are appropriate in nature and scale to the area in which they are located;*
- (b) The proposal is necessary for the efficient use of the agricultural holding or enterprise;*
- (c) Where the proposal involves the erection of buildings, there are no suitable redundant buildings on the farm holding which would accommodate the development;*
- (d) The development is not visually intrusive in the local landscape and, where the proposal is for a new building(s) and there are no suitable redundant buildings, the proposal is sited adjacent to existing buildings and suitably visually integrated in the holding; and*
- (e) The proposal demonstrates that it has taken into account traffic, environmental and amenity considerations and is in accordance with the policies, requirements and guidance contained in this Plan.*

The principle of the proposed development is acceptable in the context of the above requirements set out under **6.7.1** of the plan. The proposed development includes the refurbishment and reuse of existing buildings within the Top Yard, and the new yard is required for the efficient use of the landholding as the old Castle Yard is been decommissioned, and in my opinion, the proposal will not be visually intrusive on the landscape, as discussed later in this report. The proposed development is a more intensive form of farming than currently exists on the landholding, which is acceptable under the provisions of the current development plan.

### **7.3 Potential Impact to Residences in the area**

There are two third party appeals from residents living along Glencairn Road, where the new farmyard is to be located. There are only three residences along Glencairn Road that are positioned within 300-500metres of the new Battle Yard site. The third parties are concerned that the new farmyard will have serious odour and nuisance consequences for the residents of the area. I note the proposed yard includes a large open slurry tank (40m x40mx4.8m), and large silage pit and a collecting yard. The nearest dwelling is just over 300metre from the proposed Battle Yard site.

There is a significant level of mature planting on both sides of Glencairn Road between the dwellings and the proposed yard. In addition, there is mature planting along the western site boundary and more planting proposed along the southern axis of the new Battle Yard area. In my opinion, the separation distances and the mature hedgerows and trees, will provide an excellent natural buffer area between the new yard area and residences. This is a rural area and agriculture is the primary and zoned use of the land.

In terms of impacting on the visual amenities of the area, the refurbishment and extension of the existing Top Yard area is acceptable. This is an existing farmyard which has been established at the location for a considerable period. The proposed extension to the existing Top Yard will have a minimal visual impact, as the yard is in need for refurbishment and enhancement along the eastern yard boundary. In addition, the farmyard is detached from the N72 and surrounding road network. It has the benefit of mature trees along the access laneway to the farm which provide adequate screening and protection of the visual amenities of the area.

Regarding the potential visual impact of the proposed Battle Yard, the site is located within a landscape designated as 'Sensitive' in the County Waterford Development Plan 2011-2017. According to the **Appendix A9** attached, ***Sensitive Designation is Distinctive character with some capacity to absorb a limited range of appropriate new developments while sustaining its existing character.*** The existing land use is pasture land, and the new farm yard is located deep into the landholding away from the main road and houses. The landscape has the benefit of mature trees and hedgerows which will assist in screening it from views along Glencairn Road and the wider area. In addition, as stated earlier, the proposed Battle Yard site is positioned within a hallow on the landscape which will assist with the natural absorption of the large agricultural structures into the landscape. Additional planting is proposed along the southern site boundary, to help with screening of the proposed yard from Glencairn Road.

The third parties are concerned about noise and nuisance and it is submitted that milking 500No. cows early in the morning will result in an unacceptable disturbance to residents, ambient noise levels at night will increase with machinery and tractor

movements will interrupt sleep patterns. The slurry tank has a capacity of 550 cubic meters will impact on the residents in terms of odours.

The applicant maintains the site for the new milking parlour was chosen based on cow walking distance throughout the estate and negating the visual impact on the entire area as the site is positioned on a lower topography than other sites within the landholding. The applicant's claim, the existing Top Yard was ruled out because only 29% of the grazable land was within 500metres of the parlour and only 55% of the grazing land was within 1km of the parlour. The third-party submission states that 30% of grazable land is within 500metres of the existing parlour and 77% is within 1Km of the Top Yard. It is the policy of the development plan to promote the use of redundant farm buildings as opposed to new build. The Top Yard will be extended to accommodate 174No. cows and 206No. young cattle over the winter months. The new yard on a greenfield site will accommodate 366No. cows over the winter period. The concept of two yards was to move the development away from Lismore Castle (the old milking parlour), away from dwellings and pitches, and construct a centrally located milking parlour on the landholding. It is a solid argument presented by the applicant. I would be concerned if the Top Yard was fully extended to accommodate the 500No. milking cows also, that the existing restricted access off the N72 could be become a serious planning issue, and the sports clubs along the communal access laneway would be greatly affected by the traffic associated with the extended Top Yard. I consider there is adequate separation distances, and a sufficient natural buffer area, to ensure the residential amenities of the residents are protected. This is a rural area, and certain levels of agriculture odours and movement of machinery should be accepted as the 'modus operandi' of rural areas.

According to **section 6.7.1** of the Waterford County Development Plan 2011-2017 (as extended), *the planning authority will support and facilitate sustainable agricultural development where they are appropriate in nature and scale to the area in which they are located.* The stocking rate is 2.34LU/ha which according to the

applicant, is considered low to the industry’s normal stocking rate. I note that the national dairy herd must increase to achieve the targets set by *Harvest 2020* and *Food Wise 2025* following the abolition of the milk quota in April 2015. I accept that the applicants are experienced dairy farmers and achieve similar stocking rates to the one proposed on their own individual farms and other leased farms. Therefore, I consider the overall principle of the development proposal to be in keeping with the sustainable planning and development of the area.

#### 7.4 Appropriate Assessment

The landholding adjoins and lies within 0.31km of the Blackwater Callows SPA , Site Code: 004094 and within 0.16km of the Blackwater River (Cork/ Waterford) SAC site code 002170. The site is located within the Blackwater fresh Water Pearl Mussel catchment area,

##### **Blackwater Callows SPA , Site Code: 004094**

Conservation Objective: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:

<b>Bird Code</b>	<b>Common Name</b>	<b>Scientific Name</b>
A038	Whooper Swan	<i>Cygnus cygnus</i>
A050	Wigeon	<i>Anas penelope</i>
A052	Teal	<i>Anas crecca</i>
A156	Black-tailed Godwit	<i>Limosa limosa</i>

To acknowledge the importance of Ireland's wetlands to wintering waterbirds, “Wetland and Waterbirds” may be included as a Special Conservation Interest for some SPAs that have been designated for wintering waterbirds and that contain a wetland site of significant importance to one or more of the species of Special Conservation Interest. Thus, a second objective is included as follows:

**Objective:** To maintain or restore the favourable conservation condition of the wetland habitat at Blackwater Callows SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.



**Blackwater River (Cork/ Waterford) SAC site code 002170.**

The qualifying interests are as follows:

- 1029 Freshwater Pearl Mussel *Margaritifera margaritifera*
- 1092 White-clawed Crayfish *Austropotamobius pallipes*
- 1095 Sea Lamprey *Petromyzon marinus*
- 1096 Brook Lamprey *Lampetra planeri*
- 1099 River Lamprey *Lampetra fluviatilis*
- 1103 Twaite Shad *Alosa fallax*
- 1106 Atlantic Salmon *Salmo salar* (only in fresh water)
- 1130 Estuaries
- 1140 Mudflats and sandflats not covered by seawater at low tide
- 1220 Perennial vegetation of stony banks
- 1310 *Salicornia* and other annuals colonizing mud and sand
- 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
- 1355 Otter *Lutra lutra*
- 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
- 1421 Killarney Fern *Trichomanes speciosum*
- 3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
- 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- 91E0 \*Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
- 91J0 \**Taxus baccata* woods of the British Isles

**It is the conservation objective to maintain the favourable conservation condition in the Blackwater River for the species listed above.**

This section of the report considers the likely significant effects of the proposal on the relevant European sites in view of the Conservation Objectives, with each of the potential significant effects assessed in respect of each of the Natura 2000 sites considered to be at risk. A **Natura Impact Assessment** accompanied the application.

The proposed development is located alongside the River Blackwater and its riparian habitat, a designated Special Area of Conservation (SAC) and Special Protection Area (SPA). The main habitat surrounding the European sites is agricultural grassland. Other habitats include hedgerows, treelines, scrub and broadleaved woodland.

The European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2014 provides a basic set of measures to ensure the protection of waters against pollution caused by nitrogen and phosphorus from agricultural sources, with a primary emphasis being on the management of livestock manures and other fertilisers. Inappropriate land spreading of manure can lead to serious impacts on the receiving waters, which can in turn lead to eutrophication, algal blooms, fish kills and loss of biodiversity. The NIS states, in terms of its mitigation measures, that all manure generated at the farm yards will be spread in accordance with an up-to-date nutrient management plan and spread in accordance with the European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2014. It is stated within SAC/ SPA the stocking limit will be kept at 170kg/ha/ year. The riparian zone of the river will be fence off to prevent access to it. There will be buffer area maintained from watercourses from the spreading of manures, 10metre from the R. Blackwater and 5m from tributaries.

The objective of the NIS is to determine whether the development either alone or in combination with other plans, programmes or projects will result in significant adverse impacts to the integrity of the Natura 2000 sites identified above. The Department of Arts, Heritage and the Gaeltacht has published a Site Specific Conservation Objectives (SSCOs) of the Blackwater River SAC 002170.

In terms of the non-relevant qualifying interests of the sites, it is acknowledged that the River Blackwater is very long and linear, covering an extensive area. Certain qualifying interests of the SAC will not be impacted upon from the proposed development due to distances involved or because they are features that are not sensitive to changes in water quality. These have been listed in **Table 3 of the NIS**.

**Table 4 of the NIS** describes the qualifying interests of the River Blackwater SAC and Blackwater Callows SPA that have the potential to be impacted upon by the proposed development.

Cumulative Impacts were assessed under the NIS by reviewing other planning applications granted in the Lismore area for the past three years. According to the NIS, the current proposal will have no cumulative impacts upon the SAC/ SPA when considered in combination with other developments that have been adequately screened or where mitigation measures have been included as part of the NIS. I note the NIS states the cumulative impacts with other agricultural activities in the area has been considered, and as these activities operated within the legislation defined in S.I. 31 of 2014 regarding manure storage and general good agricultural practice, cumulative impacts arising from the combined operation of these activities with the operation of the farm at Lismore will be negligible. I would have considered it to be more appropriate to assess further the cumulative impacts of other agricultural farms especially since an adjoining farm (Fortwilliam estate to the west) is also an intensive farm operated by one of the applicants with another farmer. I am uncertain whether the requirements of S.I. of 2014 are strict enough to protect the adjoining SPA and SCA from such intensive practices, and given the implications, how can this legislation be enforced. The NIS states that if the slurry generated on the farm is spread in accordance with the annual farm plan, the integrity and conservation objectives of the Natura 200 sites will be maintained and protected.

The Mitigation Measures during construction and post construction period are outlined in **Table 5 of the NIS**. I note the planning authority's Heritage Officer reviewed the NIS and was satisfied the proposed development will not have adverse impacts on the integrity of the adjacent Natura 2000 network, and certain mitigation measures should be reinforced through planning conditions relating to slurry spreading, and dates of hedgerow removal have been specified as they are incorrect in the NIS. Given the separation distances of the proposed construction works from the Natura 2000 sites, and with no direct link from the construction sites to the SAC/ SPA, I am satisfied that once the prescribed mitigation measures are in place during the construction phase, the proposed development would not adversely affect the integrity of the European sites.

The planning application also included a Nutrient Management Plan. I note that the soils on the landholding were not soil sampled and Phosphorous and Potassium levels are assumed as per Department of Agriculture Guidelines. The overall proposed

stocking rate exceeds 170kg/ha, and a nitrate derogation will be applied under the Nitrate Regulations when the farm begins operations, which will involve the entire farm being soil sampled at 1 sample per 4 Ha every 4 years, with a nutrient management plan been prepared based on the findings. The stocking rate, concentrate use, slurry storage capacity and fertiliser use will be reviewed on an annual basis and adjusted to ensure the holding remains with Nitrates regulations rules. Given the proximity of the proposal to the Natura sites, I believe the baseline line studies could have been more detailed as opposed to been based on assumptions. The design of the proposed slurry storage and spreading rates are based on a standardised criterion for agricultural units over a 16-week wintering period. Upon receipt of the further information requested 18th of May 2018, the application was referred to Department of Culture, Heritage and Gaeltacht who replied on 1<sup>st</sup> of June 2018 stating, *the proposed development clearly indicates a significant increase in the intensity of farming at the site (which is already intensive) this will lead to an increase in the amount of slurry being spread within the Blackwater cSAC and the Blackwater Callows SPA and is of concern.* The Department recommended no material should be disposed of or used in designated areas, and that all new farm roads should not be constructed within the SAC/SPA. Whilst I consider the scientific information regarding the slurry spreading and management is informative, I do not consider certain baselines studies and mitigation measures to be site specific in view of the site conservation objectives associated with the adjoining Natura 2000 sites. Without the actual scientific knowledge of current nutrient levels of the receiving environment, and the consideration of the cumulative affect of adjoining intensive farms in close proximity or within the Natura site, there exists an uncertainty regarding sufficient scientific information to dispel any reasonable scientific doubt about the adverse effects on the integrity of the European site in light of the sites conservation objectives from the future slurry spreading.

In addition, it should be noted in the current Waterford County Development Plan its states in **Chapter 8**:

### **8.5 Water Quality**

*European and Irish legislation continue to place a strong emphasis on achieving a high standard of water quality. The Water Framework Directive, which was adopted in 2000, required that “good status” is achieved in all water bodies by 2015. The*

*eutrophication of rivers, lakes and tidal waters is one of the main threats to surface waters with agricultural runoff and municipal discharges being the key contributors.*

*The EU Nitrates Directive (91/676/ECC) requires member states to take specific measures to protect surface water and groundwater from nitrate contamination from agricultural activities. A Farm Waste Management Scheme introduced in 2006 provided grants to farmers to meet their slurry storage requirements and it is now the responsibility of individual farmers to ensure that they are compliant with the Good Agricultural Practice Regulations.*

*Nitrates Regulations have been signed into law by the Minister for the Environment, Heritage and Local Government in 2009. The European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 revise and replace the previous Regulations made in 2006 and 2007. They provide for strengthened enforcement provisions and for better farmyard management.*

### **Policy ENV 7**

*It is a policy of the Council to comply with the objectives, policies and Programme of Measures of the Water Framework Directive and the South Eastern and South Western River Basin District Management Plans.*

Furthermore, I note the planning authority did not refer the planning application and Natura Impact Statement to statutory bodies responsible for Natural Heritage sites. The issue of Archaeology was the sole concern for the planning authority. I note the further information was referred to Department of Culture, Heritage and Gaeltacht in May 2018. In my opinion, the National Wildlife Services should be notified, the Inland Fisheries and the E.P.A. (Inland Water Quality Section) and Irish Water, should be notified of the proposal in advance of any planning permission been considered favourably on the site.

It cannot be concluded that the spreading of slurry which forms an integral part of the overall development proposal, as it is a material consideration in this appeal given the scale and extent of the development proposal and the land holding's location alongside a European site, and in combination with similar adjoining farming

practices, the proposal would not adversely affect the integrity of the European site in view of its Conservation Objectives.

## 8.0 Recommendation

On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied the proposed development individually or in combination with similar developments in the area, would not adversely affect the integrity of the European site Blackwater River (Cork/ Waterford) SAC site code 002170 in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting planning permission.

## 9.0 Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,
- (d) the conservation objectives, qualifying interests and special conservation interests for the River Blackwater (Cork/ Waterford) SAC (Site code 002170):
- (e) the nature and extent of the proposed works as set out in the application
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (h) the submissions and observations received in relation to the proposed development,

(i) Waterford County Development Plan 2011-2017 as extended,

the Board is not satisfied that the applicant has demonstrated that the proposed development would not adversely affect the integrity of European site number 002170, in view of this site's Conservation Objectives. The increased level of slurry spreading on the landholding as a result of the proposed development could result in a significant negative impact on the existing water quality of the River Blackwater, as the Board is not satisfied site relevant soil studies, water quality analysis and appropriate site specific nutrient management plan has been sufficiently demonstrated to conclude the proposed development would not adversely affect the integrity of the European site in view of the site's Conservation Objectives.

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Caryn Coogan

Planning Inspector

14<sup>th</sup> of November 2018