



An
Bord
Pleanála

Inspector's Report

Part 2

ABP-302065-18

Development	New Dairy Farm, extensions to existing yard, and new entrance
Location	Castle Farm, Castlelands, Glenmorriseen, Limore, Co. Waterford
Applicant:	PCG AGRI
Planning Authority	Waterford County Council
Planning Authority Reg. Ref.	1888
Inspector	Caryn Coogan

IONTRODUCION

The Board decided to defer consideration of the appeal and issued a Section 132 Notice to the applicant On 5th of March 2019. The Board considered the submitted documentation, in particular, the Natura Impact Statement submitted with the application, did not adequately address the indirect impacts of the proposed development on the integrity of the European Site Blackwater River (Cork/ Waterford SAC) side code 002170.

APLICANTS RESPONSE

The applicant responded on 10th of April 2019 with a revised NIS, a reduction in the proposed herd size (i.e. the young cattle element, not the number of dairy cows) and the removal of land within the SAC to be leased as part of the proposed development.

A revised Natura Impact Statement included an up to date (April 2019) **Nutrient Management Plan** based on new baseline studies of the land and the water quality of the river.

The total landholding is now 228.8Ha. There will be 550No. dairy cows housed between the two farms (the existing farm A and the proposed new dairy farm B). Each farm will have a surplus of slurry storage capacity, in order to avoid transferring slurry between farmyards during the winter months. The stocking rate at the farm will be 211kg N/ha/yr, which is within the limit of 250kg N/ha/yr that is allowed under derogation. It should be noted under derogation, the entire farm will be required to have soil samples taken at 1 sample/ 5 ha every 4 years, and a Nutrient Management Plan and annual fertiliser account will be submitted to the Department of Agriculture. The farm must remain within the obligations set out in the S.I. 605 of 2017. The Nutrient Management Plan indicates 4,697cubic metres of slurry will be produced on the holding annually.

The European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2017 (SI 605 of 2017) provides a basic set of measures to ensure the protection of waters, including drinking water sources against pollution caused by nitrogen and phosphorus from agricultural sources. This also provides for buffer areas for water bodies whereby soiled water, effluents, farmyard manure and other fertilisers must not be spread within the buffer area.

The new submission includes an up to date chemical water quality analysis carried out at 4No. locations along the R. Blackwater relevant to the proposed development and the designated status of the adjoining lands. The locations and results are tabled, and are generally good, and indicative of oligotrophic conditions. The locations were chosen to gather information on water quality in the river at points upstream and downstream of the current appeal.

Third Party Submissions

The new submission was forwarded to the participating parties in the appeal, i.e. the planning authority, and the third-party appellants. There was no response from the planning authority. The two third party submissions did not raise any new issues in their submissions. Patrick Joseph Bennet did refer to a legal case which he considered to be relevant to the current proposal, EU Commission V Germany (Case C-142/16). The submission emphasised there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the designated site. In his opinion, the exclusion of the lands within the SAC does not address the indirect impacts. The NIS fails to mention a stream within 100m of the farmyard going directly to the Blackwater, which will indirectly impact on the two adjoining Sea Lamprey sites. The NIS also fails to mention the cumulative impact or effects associated with the neighbouring landholding ' Fitzwilliam Estate'.

Assessment:

Prior to the revisions submitted to the Board in April 2019, the total farm area was 270Ha, stocks numbers were 540 No. cows, 103 No. 0-1 year olds, 103 No. 1-2 year olds. The new revisions include for reduced farm area to 225ha farm, with lands excluded from the R. Blackwater SAC site, and revised/ reduced livestock numbers to 550No. dairy cows, 35 No. 0-1 year cattle.

I note the revised land spreading areas in Figure 2 of the NIS, and I welcome the fact the lands on both sides of the river bank have been excluded from the spreading area, as these were located within the designated site. The revised land spreading areas have been identified as suitable under the revised Nutrient Management Plan.

There are no land spreading areas within the designated SAC or SPA areas.

In terms of **Appropriate Assessment** I am going to review the revised NIS. There may be a certain amount of repetition here from the first report, as the qualifying or conservation interests will need to be restated, etc.

1.1. Appropriate Assessment:

The relevant Natura sites within 15km of the site were identified in Stage 1 of the assessment and the two Natura sites that were not screened out are as follows:

Conservation Objective/s: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

Site Name and Code	Distance from Proposed Development	Qualifying Interests
Blackwater River (Cork/Waterford) SAC	127metres north of site	1029 Freshwater Pearl Mussel <i>Margaritifera margaritifera</i>

<p>002170</p>	<p>No spreading of slurry to occur within SAC, Spreading will occur adjacent</p>	<p>1092 White-clawed Crayfish <i>Austropotamobius pallipes</i> 1095 Sea Lamprey <i>Petromyzon marinus</i> 1096 Brook Lamprey <i>Lampetra planeri</i> 1099 River Lamprey <i>Lampetra fluviatilis</i> 1103 Twaite Shad <i>Alosa fallax</i> 1106 Atlantic Salmon <i>Salmo salar</i> (only in fresh water) 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1220 Perennial vegetation of stony banks 1310 <i>Salicornia</i> and other annuals colonizing mud and sand 1330 Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) 1355 Otter <i>Lutra lutra</i> 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 1421 Killarney Fern <i>Trichomanes speciosum</i> 3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation 91A0 Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles 91E0 *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>)</p>
----------------------	--	--

		91J0 * <i>Taxus baccata</i> woods of the British Isles
Blackwater Callows SPA Site No: 004094	291metres north No spreading lands within the SPA, Spreading lands adjacent to it	A038 Whooper Swan(Cygnus Cygnus) A050 Wigeon (Anas Penelope) A 052Teal (Anas crecca) A156 Black-tailed Godwit (Limosa limosa)

I am satisfied having examined the revised spreading lands, and the application site, that there is no development or spreading to occur with the Blackwater SAC and the Blackwater Callow SPA. However, impacts on the designated sites cannot be ruled out as there are pathways receptor linkages between them application site, spread lands and the designated sites. The main concerns to the designated sites would be:

- Deterioration of water quality in the designated areas arising form pollution from surface water run-off during the construction phase of the development;
- Deterioration of the water quality within the designation sites during the operational phase of the farm;
- Deterioration of the water quality in the designated sites due to slurry spreading;
- Risk to Annex I or Annex II species associated with the sites from inappropriate farming practices;
- Cumulative impacts with other existing/ proposed developments.

Therefore it must be determined whether the proposal whether alone or in combination with other existing or planned projects will result in signifigant adverse impacts on the integrity of the Natura sites in respect of the designated sites conservation objectives.

The River Blackwater SAC is very long narrow SAC dissecting a board range of landscapes and locations. I have studied the details of the site, and having regard to its location in Lismore, Co. Waterford and associated maps, the estuary and mudflats

habitats they do not extend this far north, and crayfish are not found in this area. The relevant qualifying interests at Lismore are as follows:

European sites	QIs & CIs	Conservation Objectives	Attributes & Targets
River Blackwater SAC	<p>3260 Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation</p> <p>1421 Killarney Fern <i>Trichomanes speciosum</i></p>	<p>To maintain the favourable conservation condition of Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation in the Blackwater River (Cork/Waterford) SAC, which is defined by the following list of attributes and targets</p> <p>To maintain the favourable conservation condition of Killarney Fern in the Blackwater River (Cork/Waterford) SAC</p>	<p>The concentration of nutrients in the water column should be sufficiently low to prevent changes in species composition or habitat condition</p> <p>Phosphorus (MRP) is typically the limiting nutrient, however increased nitrogen (NO₃⁻) negatively impacts upon some aquatic plant communities. Nutrient enrichment typically leads to increased filamentous-green-algal biomass, and consequent changes in other algae, bryophyte and macrophyte species composition and abundance.</p> <p>Maintain size and extent of existing colonies, including sporophyte frond counts and number of gametophyte patches</p> <p>Maintain hydrological</p>

	<p>1095 Sea Lamprey <i>Petromyzon marinus</i></p>	<p>To maintain the favourable conservation condition of Sea Lamprey in the Blackwater River (Cork/Waterford) SAC</p>	<p>conditions at the locations so that all colonies are in dripping or damp seeping habitats, and water is visible at all locations</p> <p>Access to all water courses down to first order streams</p> <p>No decline in extent and distribution of spawning beds</p>
	<p>1029 FRESHWATER PEARL MUSSEL <i>Margaritifera margaritifera</i></p>	<p>To maintain the favourable conservation condition of Brook Lamprey in the Blackwater River (Cork/Waterford) SAC</p>	<p>Restore appropriate hydrological regimes</p> <p>Maintain sufficient juvenile salmonids to host glochidial larvae</p>
	<p>WOODLAND HABITATS 1819</p>	<p>To restore the favourable conservation condition of the Freshwater Pearl Mussel in the Blackwater River (Cork/Waterford) SAC.</p> <p>Semi Natural Woodland</p>	<p>Restore water quality macroinvertebrates: EQR greater than 0.90; phytobenthos: EQR greater than 0.93</p>

Blackwater Callows SPA	A038 Whooper Swan(Cygnus Cygnus)	To maintain favourable conservation condition as defined by the Attributes & Targets	To ensure habitats is not impacted upon from eutrophication and sedimentation.
	A050 Wigeon (Anas Penelope)		
	A 052 Teal (Anas crecca)	To maintain favourable conservation condition of the habitat	
	A156 Black-tailed Godwit (Limosa limosa)		

The potential indirect effects relate to:

- Transport of pollutants in ground or surface water flowing into the SAC/SPA via on-site tributaries and surface water run-off.
- Ex-situ impacts on qualifying species outside the SAC/SPA but which is an integral and connected part of the population of qualifying interest species.

River Blackwater SAC (SAC Code 002170):

The Blackwater River SAC runs through the farm, and is located north of the new dairy farm site. As stated, the proposed farm and slurry spread lands are not located within the European site and there would be no **direct** effects on the SAC as a result of the proposed works.

The first QI habitat for this SAC (*Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation) which may be located to North of the site along the riverbanks as indicated in Map 2 of the NPWS Conservation Objective Series for this SAC. However, the NPSW report also states that the current habitat area and distribution is unknown.

The second QI habitat for this SAC (**Killarney Fern**) is North of the site along a tributary upstream of the spreadlands as indicated in Map 10 of the NPWS Conservation Objective Series for this SAC also located to N of the spread lands. Having regard to its location relative to the farm location, there will be no surface water connection between the site, therefore the Killarney Fern can be screened out.

The third QI habitat for this SAC (**Sea Lamprey**) is indicated on Map 10 of the NPWS Conservation Objective Series for this SAC which is north of the spread lands. There are two sites indicated in close proximity to the subject lands. There is a buffer area between the location indicated and the spread lands, however indirect effects may arise from a stream that runs close to the proposed dairy development and to the SAC, therefore a buffer area will have to be maintained from the stream also, and all contaminated water from the farmyard will have to be contained on site.

Another QI habitat is the Semi natural woodland habitat is indicated in the vicinity of the site on Map 10 of the NPWS Conservation Objective Series for this SAC. There is no spreading of slurry, construction works or clearance of trees proposed within the woodland habitat. Therefore this habitat can be screen out.

Finally extensive tracts of **FRESHWATER PEARL MUSSEL *Margaritifera margaritifera*** is indicated on Map 8 of the NPWS Conservation Objective Series for this SAC, these are located a considerable distance upstream and downstream of Lismore locally, and the proposed development will not impact on that qualifying interest.

There is potential for **indirect** effects on these Qualifying Interest habitats by way of general disturbance during the construction and operational phases and on water quality. Possible impacts would include pollution from silt, oil, cement, etc, which would reduce the water quality affecting the habitats during the construction phase. The most likely source of pollution during the operational would be from contaminated water on the farm yard entering a watercourse. The proposed construction phase mitigation measures would ensure that any fine sediments released during the excavation and construction works, or any contaminants resulting from accidental spills or accidents would not reach the SAC. All structures and drainage channels within the farmyard will have to be leak-proof, this is a standard requirement with all intensive farming yards. The mitigation measures proposed during the construction

and operational phases will ensure such pollutants will not enter the smaller watercourses.

In terms of land spreading, the manure can have serious impacts on the local receiving waters. Under the revised proposals all spread lands within the designated area have been removed. The proposed spread lands have the benefit of a woodland buffer area, ranging from 45m-170metres in depth, and the spreading will occur in accordance with an up to date nutrient plan based on up to date soil tests, in line with SI. 605 of 2017. The stream in close proximity to the farmyard can be fenced off to ensure there is no spreading or livestock gaining access to it. The mitigation measures in the NIS is provide a 5m buffer area from the stream during the application of slurry.

Conclusion: It can be reasonably concluded on the basis of best scientific knowledge therefore that the proposed development will not adversely affect the integrity of River Blackwater SAC in view of the site's conservation objectives.

Blackwater Callows SPA [004094]

The Conservation Objective is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA, and a second 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. There is no development or spread lands occurring within the SPA. The water quality analysis carried out upstream and downstream of the development indicate good chemical and biological status, as outlined in Section 3.2 of the revised NIS. This status can be maintained through the stated mitigation measures proposed, and the applicant will liase with the National Parks and Wildlife Service as regards the proper management of the callows habitats.

Conclusion: It can be reasonably concluded on the basis of best scientific knowledge therefore that the proposed development will not adversely affect the integrity of Blackwater Callows SPA in view of the site's conservation objectives

In-combination effects:

I am surprised given the applicant was specifically asked to consider this issue in the letter from the Board dated 01/03/2019, that this issue was not given more consideration in the response by the applicant. According to the revised NIS it is stated the farm to the west, is been operated within the legislation defined in S.I. 605 of the 2017 regarding manure storage, minimization of soiled water, etc, and the cumulative impacts arising from the combined operations are considered to be negligible. Having regard to the water quality analysis carried out in the vicinity of the adjoining farm, it is clear the nitrogen and phosphorous levels are considered to be acceptable. Therefore based on that scientific evidence, the in- combination effects will have no anticipated signifigant adverse impacts on the integrity of the site.

Appropriate Assessment Conclusion:

I consider it reasonable to conclude on the basis of the revised information on the file submitted to the Board on the 10th of April 2019, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site Nos. 002170 and 004094 or any other European site, in view of the site's Conservation Objectives.

RECOMMENDATION:

Following revisions to the proposed development, and the revised Natura Impact Statement, and in light of the assessment carried out above, I am satisfied the proposed development would not adversely the integrity of the European sites, River Blackwater SAC (SAC Code 002170) and Blackwater Callows SPA (SPA Code 004094)./ I recommend planning permission be granted for the proposed development for the following Reasons and Considerations:

Having regard to :

- the provisions of Waterford County Development Plan 2011-2017,
- the existing use of the landholding for farming purposes,
- to the pattern of development in a rural area,
- the revised proposals and revised NIS submitted to the Board on appeal
- the mitigation measures set out in the revised Natura Impact Statement

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area, would not be prejudicial to public health and would not give rise to water pollution, therefore, 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 particulars lodged with the application as amended by the further plans and particulars received by An Bord Pleanála on the 10th day of April, 2019, except as may otherwise be required in order 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 particulars.

Reason: In the interest of clarity.

2. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard-

(a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and

(b) all soiled waters shall be directed to a storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

Reason: In the interest of environmental protection and public health.

3. 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 Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended, and shall provide at least for the following:

(a) Details of the number and types of animals to be housed.

(b) The arrangements for the collection, storage and disposal of slurry.

(c) 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.

4. 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.

5. 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.

6. A minimum of 16 weeks storage shall be provided in the underground storage tank. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of environmental protection and public health.

7. Details of the finishes of the new farmyard sheds, the location of fencing of paddocks and other areas and the design shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In order to allow the planning authority to assess the impact of these matters on the visual amenity of the area before the development commences.

8. The proposed development shall be undertaken in compliance with all environmental commitments made in the documentation supporting the application.

Reason: In the interests of clarity and to ensure the protection of the environment.

9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including but not limited to, hours of working, noise and dust management measures, surface water management proposals, the management of construction traffic and off-site disposal of construction waste.

Reason: In the interests of public safety, residential amenity and protection of the environment.

10. Prior to the commencement of the development, the developer shall agree in writing full details regarding culverting the proposed entrance, provisions of adequate sightlines, and finishes to the proposed splayed entrance to be in keeping with the existing stone wall along the roadside boundary.

Reason: In the interests of traffic safety and visual amenity.

11. The farmyard site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) A plan to scale of not less than 1:500 showing –

(i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder

(ii) Details of screen planting which shall not include cupressocyparis x leylandii

(iii) Details of roadside planting which shall include indigenous planting and shall not include prunus species

(b) A timescale for implementation

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development [or until the development is taken in charge by the local authority, whichever is the sooner], shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

12. 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Caryn Coogan

Planning Inspector

12th of August 2019