



An
Bord
Pleanála

Inspector's Report ABP-304926-19.

Development

Provision of an apple storage, sorting and dispatch facility associated with an existing orchard to include modifications and extension of existing agricultural buildings.

Location

Rathbane, Killeel, Co. Kildare.

Planning Authority

Kildare County Council.

Planning Authority Reg. Ref.

18/1282.

Applicant(s)

Mulrines Irish Orchards Limited.

Type of Application

Permission.

Planning Authority Decision

Grant with conditions.

Type of Appeal

Third Party

Appellant(s)

Mark Gavin.

Observer(s)

None.

Date of Site Inspection

19th of September, 2019.

Inspector

A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located approximately 1km to the south of Killeel 4.5km to the south of the M7 Motorway. The town of Naas lies approximately 8.5km to the west. Access to the site is over the local road network and off the L6030. The site is located in a rural area which comprises farmsteads and one-off houses.
- 1.2. The site has a stated area of 3.1ha and comprises a smaller section of the wider orchard landholding in the vicinity of the subject site, which extends to a total of approximately 44.5ha – 110acres. The site comprises an orchard which covers the majority of the site save for the area to the south where the existing farm buildings are located. The site is elevated and rises upwards from the roadside, towards Lamb Hill to the south east (and in Co. Wicklow).

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for the provision of an apple storage, sorting and dispatch facility associated with an existing orchard to include modifications and extension of existing agricultural buildings as well as the construction of a new adjoining agricultural apple storage building with associated site works and upgrade to existing wastewater treatment system. Revised by significant further information consisting of; the provision of a new proprietary packaged wastewater treatment system and sand polishing filter to replace existing septic tank and percolation area, all at Rathbane, Killeel County Kildare.
- 2.2. The application included a number of supporting documents including as follows;
 - Plans, particulars and completed planning application form
 - Planning Report and background to the proposed development
 - Septic tank Survey Report
 - Site Characterisation Report
- 2.3. Following the request for further information, the response included a number of supporting documents including as follows;
 - Revised Planning Report responding to issues raised

- Noise Impact Assessment
- Revised Site Characterisation Report

2.4. Following the request for clarification, the response included a number of supporting documents including as follows;

- Revised Planning Report responding to issues raised
- Amended Noise Impact Assessment
- Revised Site Characterisation Report.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 21 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, the third-party submission, internal technical and prescribed bodies reports, planning history and the County Development Plan policies and objectives. The report notes that pre-planning consultation was undertaken and also includes an Appropriate Assessment Screening Report.

The initial report required the submission of further information in relation to the following:

- The scale of the proposed development
- Visual impact and design issues
- Roads and traffic issues, including parking and access
- Water services
- Noise impact

- Third party issues

Following receipt of the response to the further information request, the subsequent planning report considered that clarification was required in relation to the following:

- Confirmation of harvest yield of the full orchard – extending to 110 acres.
- Issue relating to groundwater level in the revised Site Characterisation Report.
- Inadequate noise monitoring results.

Following receipt of the response to the clarification request, the final planning report considered that the proposed development was acceptable subject to compliance with stated conditions.

The Planning Report concludes that the proposed development is acceptable and recommends that permission is granted subject to compliance with conditions. This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. Other Technical Reports

Area Engineer: Further information required in relation to sight distances at the entrance.

Following the submission of the response to the FI request, the AE advised no objection subject to compliance with conditions.

Environmental Health Officer: Further information required in relation to water supply, location of neighbouring water supply and ventilation.

Following the submission of the response to the FI request, the EHO advised no objection, but noting that a revised site layout is required to identify the location of water supply.

Following the submission of the response to the Clarification request, the EHO advised no objection, subject to compliance with conditions.

Chief Fire Officer: No objections.

Water Services: No objection subject to compliance with conditions.

Environment Section: Further information required in relation to the location of the septic tank and percolation area as well as the need for a noise assessment.

Following the submission of the response to the FI request, there are 3 Environment Section reports noted as follows:

1. required further information in relation to noise monitoring results, measurements of noise levels and specification details of the insulation material to be used.
2. advises that the site is suitable for an on-site wastewater treatment system but not a septic tank and percolation area.
3. The final report requires clarification of FI relating to the site suitability assessment including a revised Site Characterisation Form, and a revised site layout plan identifying the exact location of all WWTPs, streams/ditches and wells

Following the submission of the response to the Clarification request, the SEE advises no objection to the proposed development subject to compliance with conditions.

Roads & Transportation: Further information required in relation to the frequency and type of vehicular traffic associated with the development, car parking and proposals to improve sightlines at the entrance.

Following the submission of the response to the FI request, the Roads & Transportation Section of Kildare County Council advised no objections to the proposed development subject to compliance with conditions.

3.2.3. Prescribed Bodies

Irish Water: No objection subject to compliance with conditions

3.2.4. Third Party Submissions

There is 1 no. third party objection noted on the planning authority file. The issues raised are summarised as follows:

- The proposed development does not comply with the requirements of the County Development Plan as the site is located within the Eastern Uplands Landscape Character Area as defined in section 14.4 of the Plan. It is an objective, L06 refers, 'to preserve and protect the character of these views and prospects obtainable from scenic routes identified in the plan.'
- The site is located on scenic route no. 33 where it is the policy to protect views to and from the ridgeline on the East Kildare Uplands and views of the Central Plains. The proposed development of a 2,000m²¹ structure will detract from the visual amenities of the area.
- Questions whether the applicant apply to DAFM for a screening decision before work commenced on the orchard.
- Road is not suitable for trucks to be used in the proposed development.
- Noise pollution issues and the proximity of houses to the development.
- Has the applicant considered alternative sites in a less sensitive area? It is submitted that the applicant has a second significant land holding in Porterstown, Kill, Co. Kildare which also has an orchard and which is located within an area with existing commercial development.
- The location of the percolation area is adjacent to the neighbouring water supply.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref 07/2206: Permission granted for the erection of horse stables, two sheep sheds, an agricultural store and revised entrance with ancillary site works.

¹ The actual floor area proposed is 2,500.3m² as per the application form

PA ref 18/1294: Concurrent application for the retention for as constructed modifications of one of the agricultural buildings approved under PA ref 07/2206, including enlargement and relocation of same on the site.

Adjacent sites:

To the east (and included within the identified landholding)

PA ref 06/1131: Permission sought for the construction of a house on part of the subject site. The application was withdrawn prior to any decision issuing.

PA ref 07/2982: Permission granted to Mr. Brian Whelan for the erection of a bungalow and wastewater treatment system.

PA ref 09/818: Permission refused to Mr. Brian Whelan for a development which will consist of the alteration of planning permission previously granted permission under planning reference number 07/2982. The alterations to the previously granted permission include the changing of the dwelling style from bungalow to that of a storey and a half style dwelling, and the addition of a double garage with all associated site works. The development was refused for reasons relating to visual impacts, conflict with Development Plan policy on the preservation of scenic routes and inappropriate design, siting and excessive scale and bulk on a sloping elevated site.

The proposed house had an overall height of 8.4m and a floor area of 370m².

Pa ref 10/348: Permission granted for the alteration of planning permission previously granted under planning reference no. 07/2982. The alterations to the previously granted permission include the changing of the dwelling style from bungalow to that of a storey and a half style dwelling, and the addition of a double garage with all associated facilities and site works.

The proposed house is similar to that previously refused but reduced in height to 7.8m and to 326m². This house has not been constructed.

To the west -

PA ref 07/202: Permission granted for the construction of a dormer bungalow – current appellant.

PA ref 08/480: Permission granted for the re-location of the entrance and change of site boundary in association with planning ref 07/202.

PA ref 16/356: Permission granted for the retention of existing site boundaries (and increase in permitted site area). Existing dormer bungalow as constructed, and all associated site works.

5.0 Policy and Context

5.1. Development Plan

5.1.1. The Kildare County Development Plan 2017-2023 is the relevant policy document pertaining to the subject site. Chapter 10 of the Plan deals with Rural Development with Section 10.4.4 dealing with Agri Food Sector and Section 10.5.6 dealing with Rural Enterprises. Of particular note are the following policies:

- RLE 2 Encourage the sustainable and suitable re-use of farm buildings in the county and to ensure that such works, where relevant, have regard to Re-Using Farm Buildings – A Kildare Perspective produced by Kildare County Council in 2006.
- RLE 3 Require new buildings and structures:
 - To be sited as unobtrusively as possible;
 - To be clustered to form a distinct and unified feature in the landscape;
 - To utilise suitable materials and colours;
 - To utilise native species in screen planting in order to integrate development into the landscape.
- RLE 4 Encourage the development of alternative rural based small-scale enterprises. The Council will consider the use, nature and scale of developments when assessing such applications. In addition, the Council will also consider the requirement to locate such developments in rural areas.

5.1.2. In addition to the above, the following sections are considered relevant:

- Chapter 13: Natural Heritage and Green Infrastructure, including Section 13.10.1 and Policy GI 11 which seeks to ensure that hedgerow removal to facilitate development will be kept to a minimum.
- Chapter 14: Landscape Character. The subject site is located within the Eastern Uplands Landscape Character Area and in an area identified as Class 3 'high sensitivity'. Such areas are described as 'Areas with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors.'

Section 14.6 of the plan deals with scenic routes and the subject site lies adjacent to Scenic Route no. 33 - Views to and from the Ridgeline on the East Kildare Uplands and Views of the Central Plains and in proximity to Scenic Routes no. 22 - Views to the North-West of the Open Countryside; from Killeel Village to Rathmore Village.

Section 14.9.1 deals with policies relating to Scenic Routes and Protected Views including:

SR 1: Protect views from designated scenic routes by avoiding any development that could disrupt the vistas or disproportionately impact on the landscape character of the area, thereby affecting the scenic and amenity value of the views.

- Chapter 17 of the Plan deals with Development Management Standards, with Section 17.9.8 dealing with Agricultural Developments and provides as follows:

Agricultural developments have the potential for creating impacts on the environment and landscape. The traditional form of agricultural buildings is disappearing with the onset of advanced construction methods and a wider range of materials. Some new farm buildings have the appearance of industrial buildings and, due to their scale and mass can have serious visual impacts.

- In the construction and layout of agricultural buildings, the Council will require that buildings be sited as unobtrusively as possible and that the finishes and colours used blend into the surroundings. The Council accepts the need for agricultural buildings and associated works (walls, fences, gates, entrances, yards etc.) to be functional, but they will be required to be sympathetic to their surroundings in scale, materials and finishes. Buildings should relate to the landscape and not the skyscape. Traditionally this was achieved by having the roof darker than the walls;
- Appropriate roof colours are dark grey, dark reddish brown or a very dark green. Where cladding is used on the exterior of farm buildings, dark colours (preferably dark green, red or grey) with matt finishes will normally be required. The grouping of agricultural buildings will be encouraged in order to reduce their overall impact in the interests of amenity;
- The removal of hedges to accommodate agricultural developments should be a last resort. A landscaping plan is required as part of an application for agricultural development and should include screening and shelterbelt planting, composed principally of native species; and
- Other considerations which will arise in such developments will be traffic safety, pollution control, and the satisfactory treatment of effluents, smells and noise. Proper provision for disposal of liquid and solid wastes will have to be made. In addition, the size and form of buildings and the extent to which they can be integrated into the landscape will be factors which will govern the acceptability or otherwise of such development. Proposals for preventing surface water runoff onto the public road shall be included with planning applications.

5.2. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Red Bog SAC (& pNHA)(Site Code: 000397) which is located approximately 2.8km to the south of the site.

The Wicklow Mountains SAC, Site Code 002122 lies approximately 8km to the east of the site.

5.3. EIA Screening

Having regard to nature and scale of the development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. The issues raised reflect those as submitted to the Planning Authority and are summarised as follows:

- Non-compliance with policies of the CDP in relation to the Eastern Uplands landscape. The development, by reason of its height, length and bulk, conflicts with the requirements of the Plan and would detract from the visual amenities of the area.
- The stated yield of the Orchard of 60 tonnes per hectare is excessive given the 'National Apple Orchard Census 2012' states that the average yield per hectare in Ireland is between 27.4 and 29.7 tonnes per hectare. In this regard, the scale of the development is larger than the requirements on the site and will be used for the storage of imported apples from other locations.
- The condition attached by the Planning Authority is noted but it is requested that the Board reduce the scale to reflect the true yield of the onsite orchard,

given the location of the site in an area of high amenity and on a designated scenic route.

- Large sections of hedgerow, in excess of the thresholds indicated in the EC (EIA)(Agriculture) Regulations 2011, were removed by the applicant when the orchard was established. This question has not been addressed and therefore it is questioned if permission should be granted for a structure to an unauthorised activity.
- Work hours have not been stated and the noise impact assessment has only considered the noise impact of HGVs and yard activities in daytime conditions.
- The road network is not suitable for trucks that are proposed in this development. The warehouse should be located in an area with a suitable road network.
- The proposed chiller / cold storage plant is located adjacent to housing which will create noise pollution 24 hours a day to residents.
- Has the applicant considered an alternative site for the development is a less sensitive area? The applicant has a second landholding in Porterstown, Kill, Co. Kildare which is also an orchard, approximately 2.5km from the application site. It is submitted that the alternative area is better suited, being located with other commercial development and a suitable road network.
- The applicant has submitted that the current site is their 1st priority as it is currently yielding a mature yield. This is contradictory to the clarification of further information and the Porterstown orchard was established in advance of the current site and therefore, would require storage facilities more urgently.

It is requested that the proposed development be refused permission.

6.2. Applicant Response

The first party has responded to the third-party appeal, including a number of appendices of documents submitted to the PA, correspondence relating to the agricultural nature of the application and a horticulturalist report confirming the

nature of the apples planted and the potential yields associated with them. The response is summarised as follows:

- In terms of impact on visual amenity, it is submitted that the appellants opinion is subjective. There are existing agricultural buildings in the area, the landscape berm is to be maintained and the existing planting on the berm will be embellished to minimise the visual impact.
- In terms of the projected yield of the orchard, a report from Mr. Graeme Cross, BSc. (Hons) Horticulture is submitted. This report is summarised as follows;
 - The use of a single years survey figures as a reflection of the production potential of the orchard must be contested.
 - There are many variables in apple production, including weather, drought or poor summer sunlight.
 - The figures presented include a variety of apples including cider, culinary or mixed varieties. Cider apples are much lighter and smaller than other apple types and the recommended planting density is 500-600 trees per hectare. The subject site will produce dessert apples which are planted at a density of 1340 trees per hectare, ie more than double the density of cider apples. This results in a higher yield per hectare.
 - Evidence of the trees planted is provided.
 - The proposed scale of the development is justified and while it is accepted that the projected yield of 60 tonnes /Ha is a maximum level, not likely to be achieved each year, a yield of 44.5 tonnes (75%) will be sufficient to fill the capacity of the storage facility as it has been planned.
- The appellant implies that the orchard activity is unauthorised because the boundary removal and field restructuring exceeded the threshold of 500m. It is submitted that this is not true and the removal of hedgerow was approximately 305m. The Department of Agriculture was consulted about the new farm

activity and inspectors inspected and assessed the site when the orchard was being established.

- In terms of working hours, Condition 5 of the Grant of Permission restricts the hours for HGVs between 7.00am and 10.00pm. This condition will be complied with. In addition, condition 6 sets out noise threshold limits and a noise survey is required to be completed within 6 months of the facility operating.
- In terms of traffic issues, it is submitted that even if the land was to be used for another agricultural activity, there would be an associated traffic impact on the local road network.

Extending the period the apples can be stored on site will elongate the period of dispatch and will spread out the vehicular activity and reduce the impact on the road network.

The site can be reached by a number of different routes and the prescribed route uses the most suitable local road network.

- In terms of noise, it is submitted that the Acoustic Consultant reports considered noise impact over 24 hours. Reference is also made to Condition 6 of the grant of planning permission.
- In terms of the issues raised in relation to alternative sites, it is considered inappropriate for the appellant to consider the merits of locating this development elsewhere.

The response concludes requesting that the Board look at the proposal objectively and based on the information presented as part of the application. It is considered that the proposed development will not be contrary to the proper planning and development of the area and should be acceptable in principle with the provisions of the Kildare County Development Plan for the reasons stated. It is also requested that consideration be given to the similarities of the proposal if it was for potatoes rather than apples. The same principles apply. It is requested that permission be granted.

6.3. **Planning Authority Response**

The Planning Authority submitted a response to the third-party appeal advising no further comments.

6.4. **Observations**

None

6.5. **Further Responses**

The Third Party Appellant responded to the First Party Response to the Third Party Appeal. The submission is summarised as follows:

- In terms of the visual impact, the appellant decided not to appeal the retention application, decided on the 23/07/2019, for the existing structure on the site as the height, length and bulk, do not conflict with the requirements of the CDP.
- The scale of the proposed structure is over 100% higher which will detract from the visual amenity of the area. The development would represent an undesirable precedent for similar developments in exposed and elevated sites on scenic routes and in areas of high amenity.
- It is noted that the Cold Store element of the building is only 7.5m in height and therefore, the proposed 12m height is excessive and the existing berm only partially screens the development on the northwest elevation.
- The proposed cold storage facilities are rarely associated with agricultural development and the analogy should be made with a meat processing plant rather than a potato farm.
- In terms of the projected yield, the figures presented are clearly stated for dessert apples and therefore, the figures are correct.
- The information provided have inconsistencies in terms of yield and maturity of the orchard. It is also noted that the orchards 'constitute an innovative and novel system of production' which would suggest that as this is not a tried and tested approach, the figures provided are not concrete. The response to the

appeal also introduces a new element – ‘rapid chill chamber’ to provide ‘buffer capacity’. This ambiguity is not a strong foundation to base a development of this magnitude at this location.

- It is not accepted that the works carried out in planting the orchard are in accordance with the stated thresholds and due to the fact that screening has not taken place, the orchard is unauthorised and no ancillary buildings should be given permission on this basis.
- The orchard was a huge intensification from a marginal sheep farm in an upland area and AA should have been undertaken.
- In terms of the alternative site, it is submitted that the Porterstown orchard is of similar size and would be far more suitable to a development of this nature. As there is no similar proposal for the site at Porterstown, which is a more mature orchard, adds further ambiguity to the development -
 - Where will the apples from Porterstown be stored?
 - Why is a similar development not required at Porterstown?
- In terms of the analogy with a potato farm, it is submitted that this weakens the applicants case as they were unable to find a similar development for apple storage, confirming its ‘novel’ nature.
- Examples given are not comparable and it is noted the AA was required.

It is contended that the development must be refused.

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Compliance with National Guidelines & Standards, the County Development Plan & General Development Standards
2. Visual Impacts
3. Roads & Traffic
4. Water Services
5. Other Issues
6. Appropriate Assessment

7.1. Compliance with National Guidelines & Standards, the County Development Plan & General Development Standards:

- 7.1.1. Permission is sought for the construction of a large apple storage, sorting and dispatch facility on the site of the existing orchard. The facility will involve the adaptation of the existing agricultural buildings on the site and the construction of a new apple storage facility with a floor area of 2,500.3m² and an overall height of 12m. The subject site is located within the rural area, relates to a substantial agricultural development.
- 7.1.2. The Kildare County Development Plan, 2017-2023 is the relevant policy document where Chapter 10 deals with Rural Development. In terms of the principle of the development, the Plan seeks to support the Agri Food enterprises at suitable locations (Policy ECD 27 refers). It is the stated policy of Kildare County Development Plan to encourage the sustainable and suitable re-use of farm buildings in the county and to ensure that such works, where relevant, have regard to Re-Using Farm Buildings – A Kildare Perspective produced by Kildare County

Council in 2006, Policy RLE 2, and sets out a number of requirements for new buildings and structures, Policy RLE 3 refers. Policy RLE 4, while encouraging the development of alternative rural based small-scale enterprises, advises that the Council consider the use, nature and scale of developments when assessing such applications. In addition, the Council will also consider the requirement to locate such developments in rural areas.

7.1.3. In terms of Development Management Standards, Chapter 17, Section 17.9.8 of the Plan relates to Agricultural Developments. The Plan notes that agricultural developments have the potential for creating impacts on the environment and landscape and that some new farm buildings have the appearance of industrial buildings and, due to their scale and mass can have serious visual impacts.

7.1.4. In addition to the above, the Plan provides for a number of policies which deal with landscape and visual impacts associated with new developments which I will deal with further below in section 7.2 of this report. The site is occupied by an orchard and permission has been granted in the past for agricultural type buildings on the site. As the proposed development proposes the reuse and adaption of the existing buildings on the site, in principle, I accept that the proposed development is acceptable.

7.2. **Visual Impacts**

7.2.1. The proposed development will result in the construction of a large agricultural type building which will have an overall height of 12m and a length of 54.6m to the road elevation. The Board will note that at present, the existing agricultural structures on the site, which rise to 5.4 and 5.7m in height, are modest in scale and are not immediately visible from the adjacent public road. In the context of the proposed development, I consider that the scale of the proposed development is significant.

7.2.2. The subject site is located within the Eastern Uplands Landscape Character Area and in an area identified as Class 3 'high sensitivity'. Such areas are described as 'areas with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape having regard to prevalent sensitivity factors.' Section 14.6 of the Kildare County Development Plan deals with scenic routes and the Board will note that the subject site lies immediately adjacent to Scenic Route no. 33 - Views to and from the Ridgeline on the East Kildare

Uplands and Views of the Central Plains and in proximity to Scenic Routes no. 22 - Views to the North-West of the Open Countryside; from Killeel Village to Rathmore Village.

- 7.2.3. Section 14.9.1 of the Plan deals with policies relating to Scenic Routes and Protected Views including Policy SR 1, which states that it is the policy of the Council to 'protect views from designated scenic routes by avoiding any development that could disrupt the vistas or disproportionately impact on the landscape character of the area, thereby affecting the scenic and amenity value of the views.' In this context, I have serious reservations regarding the scale of the proposed apple storage, sorting and dispatch facility. The proposed development will result in a significant and industrial style building to be located within an upland area which has been designated as having a high sensitivity to development.
- 7.2.4. In addition, I am concerned that the design of the building has not had any regard to the landscape into which it is proposed to be placed. I acknowledge the submission of the first party in terms of the space necessary to accommodate the storage requirements and associated equipment associated with the wider orchard on the landholding but consider the introduction of the building as proposed is wholly inappropriate, and if permitted, would contravene the requirements of policy SR1. The development, if permitted, would significantly disrupt the vistas and disproportionately impact on the landscape character of the area, affecting the scenic and amenity value of the views.
- 7.2.5. In the context of compliance with Section 17.9.8 of the Kildare County Development Plan, I do not accept that the proposed development is to be sited as unobtrusively as possible within the site, and consider that it is not sympathetic to the surroundings in scale, materials or finishes. While I acknowledge that the finishes and external panelling colour can be dealt with by way of agreement, it is the scale of the building proposed that gives rise to my concerns in terms of visual impact.
- 7.2.6. I note the comments of the First Party in relation to a previously permitted shed 'of similar size and scale' granted approximately 700m to the north east of the current proposed site and the indication that the proposed ridge line will be 'significantly lower' than that of the shed permitted. I have examined the case presented and would advise the Board that the context of the permitted site is significantly different

to that of the currently proposed. The permitted development was for a private covered riding arena, with a floor area of 1475m². The arena was to be located within an established farmyard with associated stables and buildings. The covered arena will be open on all four sides with a ridge height of 9.3m. The levels of the site and the nature of the roadside boundaries would result in screening of the arena. I do not consider that the two proposals are comparable.

- 7.2.7. Having regard to the scale of the development proposed, the visual impact would be significant and would be visually obtrusive in this vulnerable landscape and adjacent to a scenic route, notwithstanding the landscaping proposals presented.

7.3. **Roads & Traffic**

- 7.3.1. Having regard to the nature of the agricultural enterprise at this location, I am satisfied that the public road network is capable of accommodating the level of traffic generated, without undue impacts to existing road users.

7.4. **Water Services**

- 7.4.1. The Board will note the proposals to upgrade the existing wastewater treatment system at the site. In the context of the response to the further information and clarification request, I am satisfied that the site has been adequately assessed in this regard. Should the Board be minded to grant planning permission in this instance, I recommend that this element of the development be appropriately conditioned.

7.5. **Other Issues**

7.5.1. **Noise**

The Board will note that the applicant submitted a Noise Impact Assessment report in relation to the proposed development. The Report concludes that the development will not result in noise impacts for adjacent properties and the Environment Section of Kildare County Council has recommended that conditions be attached to any grant of planning permission in order to protect public health. I would consider it reasonable to include said conditions should the Board be mindful to grant permission for the development as currently proposed.

7.5.2. **Unauthorised Works**

The Board will note that an issue arising in the third-party appeal relating to non-compliance with the EC (EIA)(Agriculture) Regulations 2011 in relation to activities carried out on the site during the planting of the orchard. The appellant implies that the orchard activity is unauthorised because the natural hedgerow boundary removal and field restructuring to accommodate the orchard exceeded the threshold of 500m, and therefore, requiring screening for EIA. The appellant raises the question as to whether the applicant made an application to the Department of Agriculture, Food and the Marine.

The applicant submits that this is not the case and the removal of hedgerow was approximately 305m. It is also submitted that the Department of Agriculture was consulted about the new farm activity and inspectors inspected and assessed the site when the orchard was being established. No evidence of the consultations or stated site visits from Inspectors from the Department have been provided to the Board.

In the context of the proposed development, Schedule 5 of the Planning and Development Regulations, 2001 as amended identifies development for the purposes of Part 10, with Part 2 relating to agriculture. The nature of the proposed development does not fall within a category of development which requires compulsory EIA under the Regulations. However, I would be satisfied that the provision of Section 34(13) of the Planning & Development Act, 2000 as amended, which states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development' is sufficient to ensure that any requirements to comply with other legislation are undertaken prior to the commencement of development on the site.

7.5.3. **Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.6. **Appropriate Assessment**

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 **Recommendation**

I recommend that planning permission be refused for the proposed development for the following stated reason.

9.0 **Reasons and Considerations**

1. The site of the proposed development is located within the Eastern Uplands Landscape Character Area and in an area identified as Class 3 'high sensitivity' landscape with reduced capacity to accommodate uses without significant adverse effects on the appearance or character of the landscape. The site is also located on a designated scenic route. It is the stated policy of the Kildare County Development Plan to protect views from designated scenic routes by avoiding any development that could disrupt the vistas or disproportionately impact on the landscape character of the area, thereby affecting the scenic and amenity value of the views.

It is considered that the proposed development, by reason of its nature, scale, height, massing and extent, would intrude into views of this area and would seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine
Planning Inspector
16th October, 2019