



An
Bord
Pleanála

Inspector's Report ABP-305098-19.

Development	Construction of 1 No. Organic Poultry House.
Location	Drumhillagh, Ballybay, County Monaghan.
Planning Authority	Monaghan County Council.
Planning Authority Reg. Ref.	19122.
Applicant	David Millar.
Type of Application	Planning Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party.
Appellant(s)	Joseph Markey & Others.
Observer(s)	None.
Date of Site Inspection	18 th day of November, 2019.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The irregular shaped appeal site which has a stated 2.562ha is located in the rural townland of 'Drumhillagh', is situated c1.8km to the south of the suburban fringes of Ballybay, in County Monaghan. It is accessed via an agricultural entrance that is restricted in its width, unsurfaced, steep in gradient lane and opens onto the eastern side of the R162, Regional Road, which provides connection between the settlements of Ballybay to the north and Shercock to the south. This entrance lies opposite a restricted in width and tarmacked cul-de-sac rural road that appears to provide connection for a neighbouring farmstead and dwelling.
- 1.2. The site itself forms part of three existing fields that are in use as pastureland and is heavily undulating in terms of its ground levels. Part of the northern most component of the site, i.e. c53m linear strip of the site, extends into an existing farmstead which includes a poultry farm that was subject to an appeal to the Board under ABP Ref. No. 246752. This benefits from a connection onto the R162. The site also contains several deep drainage ditches and there are pockets of water loving plants present through out the site.
- 1.3. They are surrounded by undulating drumlin landscaped that contains several detached one-off houses, including a single storey dwelling house that bounds part of the southern boundary of the site; farmsteads and independent agricultural farmyards with their associated buildings.

2.0 Proposed Development

2.1. The Original Planning Application

- 2.1.1. Planning permission is sought for the construction of 1 no. poultry house with a stated floor area of 1,737.46m², a stated height of c7m, a stated width of 18.9m and a stated length of 92.5m. Planning permission is also sought for a meal silo with a stated 9.1m overall maximum height.
- 2.1.2. According to the submitted documentation on file the proposed structures would be sited within the red line site area which has a stated 2.562ha but they would also be connected to a ranging area of comprising of 6ha in total. Currently the proposed ranging area like the site itself is used for bovine livestock grazing. The applicant

proposes that the bovine livestock grazing would be replaced by poultry foraging with the removal of excess grass by mowing and baling for silage/hay.

2.1.3. The proposed development all comprises of a soiled water tank and associated site works including the upgrading of the entrance and internal farm roadway to provide an alternate access to the existing poultry house.

2.1.4. This application is accompanied by the following documents:

- A letter of consent from the landowner to make this application.
- A letter from the Transport Manager of College Group indicating that they confirm that they would collect and dispose of the poultry from the applicant's operation.
- A letter from Chicken Litter Re-cycling Co Op Society Limited indicating that they will be collecting the litter generated from the proposed development sought under this application and that they are a registered contractor with the Department of Agriculture, Food and The Marine for the transport of animal by-products (poultry litter), DAFM Reference No. HAC2342.
- A document titled: "*Description of the Location, Operation and Management of the Proposed Development of 1 No. Free Range Layer House (to accommodate c6,000 birds)*".
- Details of Existing Waste Storage Facilities.

2.2. Applicants Further Information Response

2.2.1. This was submitted on the 18th day of June, 2019, and it indicates that the proposed house would have capacity for not more than 6,000 birds split into 2 colonies of 3,000 birds and that the manure storage facilities located under the slatted bird area would provide c1,077m³ of storage.

2.2.2. It further indicates that there will be a presence of staff and deliveries/collections between the hours of 06:00 and 20:00hours; that there would be a programme for vermin and pest control on site; and, that the organic manure from this site will be allocated for use as a fertiliser source in accordance with the regulations set out in S.I. No. 605 of 2017 and would be kept by the applicant who will provide all required details to the farmer receiving the organic fertiliser.

2.2.3. This response did not include any substantive changes to the original application as lodged but simply provided further clarity as well as details in terms of the proposed development sought.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. The Planning Authority decided to **grant** planning permission subject to 6 no. conditions including:

Condition No. 2: Water protection measures and restrictions on manure disposal.

Condition No. 3: Sets out the requirements of the road entrance.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The **final Planning Officers** report reflects the decision of the Planning Authority to grant permission following the submission of what they considered to be a satisfactory response to the Planning Authority's further information request. This request which was recommended by the Planning Officer in their initial Planning Officer's report sought the following details:

- Compliance with Policy AGP 2 of the Development Plan;
- Improved sight lines onto the R162;
- Improved surface water drainage details for the road entrance onto the R162;
- Clarity on foul and storm water details; &
- A response to the concerns raised in the 3rd Party submissions received.

3.2.2. **Other Technical Reports**

Roads: No objection subject to recommended conditions.

Engineers: No objection to subject to recommended conditions.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. The Planning Authority received 2 no. 3rd Party submissions objecting to the proposed development. I note that these submissions were made by property owners in the immediate vicinity of the appeal site and the issues raised are similar to those raised in the appellants submission to the Board. The issues can be summarised as follows:

- Concerns are raised that, if permitted, the proposed development would have an adverse visual impact on the amenities of the area as perceived from the R162.
- The existing poultry building and that now proposed are inappropriate in this location as they would fail to visually integrate into the local landscape setting.
- Potential for adverse human health impacts are raised.
- It is questioned whether the applicant hasn't chosen a more suitable location within their c42ha landholding.

4.0 Planning History

4.1. The Site and in the Immediate Vicinity

- **ABP Ref. No. 246752:** On appeal to the Board planning permission was **granted** subject to conditions for a development consisting of the construction of one number organic poultry house, together with all ancillary structures (to include meal storage bins(s), soiled water tank(s) and associated site works (to include new site entrance). I also note to that this development effectively consisted of what was described as the development of an organic free-range egg producing facility to accommodate 3,000 birds and that the south western portion of this appeal site overlaps with the northernmost portion of the current appeal site.

The Board cited the following reasons and considerations:

“Having regard to the rural location of the proposed development and Policy AFP4 in the current Monaghan County Development Plan 2013-2019 which seeks to

facilitate, where appropriate, specialist farming practices including poultry rearing, it is considered that, subject to compliance with the conditions set out below, the proposed development would not have an adverse visual impact, would not seriously injure the amenities of the area by way of odour or noise nuisance, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.”

Of note are the following conditions:

Condition No. 1: Required the development to be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted with the further information response.

Condition No. 3: Required that all poultry manure generated in the poultry house shall be disposed of off-site.

Condition No. 7: Required the vehicular entrance and associated sightlines shall comply with the requirements of the Planning Authority.

Condition No. 8: Required in the first planting season following the commencement of development, the site shall be landscaped in accordance with the scheme submitted and that the hedgerow shall be set back and planted.

Condition No. 9: Except for the trees and hedgerows to be removed to facilitate the construction of the poultry house and site entrance, all existing trees and hedgerows on the site and in the range areas shall be retained and reinforced with additional planting.

5.0 Policy and Context

5.1. National Guidelines and Legislation

5.1.1. The following guidelines and legislation are relevant to the development sought:

- Food Wise 2025 – A 10-year Vision for the Irish Agri-Food Industry (Department of Agriculture, Food and the Marine, 2017);
- EU Good Agricultural Practices for the Protection of Waters Regulations (2017) Statutory Instrument (SI) No.605 of 2017, as amended by SI No.65 of 2018.

5.2. Local Planning Policy Provisions

5.2.1. The appeal site is not zoned under the Monaghan County Development Plan, 2019 to 2015, and there are no local objectives, road proposals or other designations affecting the site.

5.2.2. Relevant Policies include:

AGP1: *“To permit development on new and established agricultural or forestry holdings where it is demonstrated that:*

It is necessary for the efficient use of the agricultural holding or enterprise,

(a) The appearance, character and scale are appropriate to its location,

(b) The proposal visually integrates into the local landscape and additional landscaping is provided where necessary,

(c) The proposal will not have an adverse impact on the natural or built heritage,

(d) The proposal will not result in a detrimental impact on the amenity of residential dwellings outside of the holding including potential for issues arising from noise, smell and pollution. Where a development is proposed within 100m of any residential property not located on the holding within the rural area (i.e. outside of a designated settlement) written consent, witnessed by a solicitor or a peace commissioner, from the adjoining property owner stating there is no objection to the proposal must be provided,

(e) The proposal will not result in a pollution threat to sources of potable water, water courses, aquifers or ground water,

(f) Proper provision for disposal of liquid and solid waste is provided,

(g) The proposal will not result in a traffic hazard.

Where a new building is proposed applicants must also provide the following information:

- (h) Outline why there is no suitable existing building on the holding that cannot be used,*
- (i) Design, scale and materials which are sympathetic to the locality and adjacent buildings.*
- (j) The proposal is located within or adjacent to existing farm buildings, unless it has been clearly demonstrated that the building must be located elsewhere for essential operational or other reasons,*
- (k) Ensure that the proposal will not seriously impact on the visual amenity of the area of the natural surrounding environment and that the finishes and colours used blend into the surroundings,*
- (l) Where possible, the development is grouped with existing buildings in order to reduce their overall impact in the interests of amenity.”*

AGP 2: *“In addition to the information required under AGP 1 the following additional information will be required for assessing applications for intensive poultry units or similar specialised agri-developments the Council:*

- (a) An Environmental Impact Statement (EIS) and/or Appropriate Assessment depending on the size and use of the unit, and its likely impact on the environment,*
- (b) Details of the scale and intensity of existing operations in the vicinity of the site, including the cumulative impact of similar type developments within proximity of the site,*
- (c) Methods for waste management including frequency and location of disposal relative to the proposed unit,*
- (d) Details of air pollution arising from the units and effluent storage, transportation and spreading,*
- (e) Proximity of development to aquifers and water courses and its impact on them.*

- (f) *The potential impact of the proposal on the residential amenity of adjoining occupiers must be considered. A unit shall not be developed at a distance of less than 100 metres from a dwelling within the rural area (i.e. outside of a designated settlement) unless the third party has given written consent, witnessed by a solicitor or a peace commissioner.*
- (g) *Details of associated activities such as cleaning, ventilation and heating.*
- (h) *A comprehensive landscaping plan.*
- (i) *A statement outlining why a location on the landholding was deemed more appropriate to alternative options. If the Planning Authority, consider a more appropriate location is available on the landholding the application may not receive favourable consideration.*
- (j) *Traffic management plans and traffic assessment associated with the proposed development may be required for large proposals."*

RCP 1: "To only grant planning permission for a building in the countryside where it is demonstrated that the development will not cause a detrimental impact or further erode the rural character of the area.

Any new building will be unacceptable where;

- It is unduly prominent in the landscape
- It results in build-up of development when viewed with existing and/or approved buildings and where it would detrimentally impact on the rural character of the area.
- It does not respect the traditional pattern of settlement within the area.
- It creates or adds to a ribbon of development except where it is considered infill or a replacement building.
- The impact of the ancillary works including the creation of visibility splays would damage the rural character of the area."

- RCP 3: Seeks to minimise loss of hedgerows and trees.
- LCP 1: Requires all planning applications to include a comprehensive landscaping plan.
- LCP 2: Where developments necessitate the removal of extensive hedgerows and trees these shall only be permitted in exceptional circumstances.
- ENP 2: Requires the provision of at least one energy efficient measure in the design of all new developments.

5.3. Natural Heritage Designations

- The appeal site is located c2km to the east of Proposed Natural Heritage Areas: Dromore Lakes (Site Code: 000001).
- The appeal site is located c5.3km to the south of Proposed Natural Heritage Areas: Cordoo Lough (Site Code: 001268).
- The appeal site is located c6.3km to the north of Proposed Natural Heritage Areas: Black & Derrygoony Loughs (Site Code: 001596).
- The appeal site is located c6.7km to the north of Proposed Natural Heritage Areas: Loughbawn House Loughs (001595).
- The appeal site is located c6.5km to the north east of Proposed Natural Heritage Areas: Gibson's Lough (Site Code: 001604).
- The appeal site is located c7.7km to the north west of Proposed Natural Heritage Areas: Lough Egish (Site Code: 001605).
- The appeal site is located c10.2km to the south west of Proposed Natural Heritage Areas: Lough Smiley (Site Code: 001607).
- The appeal site is located 11km to the north east of Proposed Natural Heritage Areas: Tassan Lough (Site Code: 001666).
- The appeal site is located c11.4km to the north east of Proposed Natural Heritage Areas: Madabawn Marsh (Site Code: 000988).
- The appeal site is located c11.6km to the east of Proposed Natural Heritage Areas: Drumgole Lough (Site Code: 001601).

- The appeal site is located c11.9km to the west of Proposed Natural Heritage Areas: Muckno Lake (Site Code: 000563).
- The appeal site is located c12.4km to the south east of Proposed Natural Heritage Areas: Rafinny Lough (Site Code: 001606).

5.4. Environmental Impact Assessment

- 5.4.1. The proposed development for one poultry house will accommodate a maximum of 6,000 birds. The applicant states they current operate a poultry house in the vicinity of the site with 3,000 birds. The later development was granted permission subject to conditions by the Board under appeal case ABP Ref. No. 246752. Therefore, the cumulative amount of birds would be 9,000 birds. The cumulative amount of birds is below the mandatory requirement of 40,000 place for the intensive rearing of poultry listed in Class 1(e)(i) of Part 2 of the Planning and Development Regulations, 2001, as amended, therefore the proposal is sub-threshold. In considering any requirement for a sub-threshold EIS, I have had regard to the criteria for determining whether a development would or would not be likely to have significant effects on the environment as set out in Schedule 7 of the Planning and Development Regulations, 2001, (as amended). Considering the relatively modest scale and extent of the development, including the quantum of birds to be reared at the appeal site and that of the existing poultry house, the proposals for managing waste and mitigating pollution and nuisances, the location of the site in a rural area, I consider that the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 5.4.2. Notwithstanding, having regard to the large number of proposed Natural Heritage Areas (pNHAs) within a 15km of the site and the protection provided for such sites, in particular by Policy HLP 5 of the current Monaghan Development Plan, which states that the Planning Authority shall seek *“to recognise that nature conservation is not just confined to designated sites and acknowledge the need to protect non-designated habitats and landscapes and to conserve their biological diversity and provide ecosystem services”*.
- 5.4.3. Whilst pNHA's have not been statutorily proposed or designated they are recognised as being of significance for wildlife and habitats as such their importance is

recognised by such Development Plan's and by policies like that of Policy HLP 5. It is therefore incumbent that the applicant demonstrate that the proposed development does not diminish these pNHA's.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows:

- Reference is made to a previously granted planning permission for a similar development by the applicant (Note: ABP Ref. No.246752) which they contend that many of its conditions have not been complied with to date.
- The appellants dairy farm and residential amenities have been detrimentally affected by the previous grant of permission and it would be adversely impacted further by the proposed development, if permitted.
- There is no record of the applicant having complied with previous grant of permission by the Board.
- Since implementing the grant of permission, the appellants have had the nuisance of fly infestations over the last two summers, and they allege that they have had to seek professional pest control to deal with this nuisance.
- These infestations have caused serious distress and they are concerned that these could result in serious health implications.
- This proposed development would result in a 200% increase in the applicants existing operations and would result in further deterioration of their residential amenities, be detrimental to human health and would be contrary to the proper planning and sustainable development of the area.
- This application should be considered as an extension to a non-complying development.

6.2. Applicant Response

6.2.1. The applicant's response can be summarised as follows:

- Alternative enterprises such as the proposed development are essential to meet consumer demands and to allow farmers to diversify.
- The applicants do not propose to add any nutrients to the ranging area.
- The proposed development has been sited to take maximum use of the adjoining natural hedgerows and the site selected takes into account the requirements of Department of Agriculture, Food and The Marine as well as Bord Bia regarding the operation and management of organic free-range poultry houses.
- The proposed development complies with the Development Plan.
- The site is sufficiently removed from residential properties and would not result in a loss of residential amenity.
- The site is the most suitable site in the landholding for this development.
- Access to the site would be via an upgraded entrance off the R162 which will also facilitate the existing poultry house; thus, the proposed development would not give rise to any road safety issue.
- The appellants do not provide any substantive reason as to why the Planning Authority's decision should not be upheld.
- The entrance proposed was not a viable option until the current proposed development became an option.
- Subject to the current development being approved the previously approved entrance would not be required.
- The organic manure from the proposed development is an organic fertiliser utilised in accordance with S.I. 605 of 2017 and is not waste as inferred to in the appeal.
- The manure from the proposed development is not poultry litter and does not have the same risk associated with non-organic production.
- The proposed development would not give rise to any undue risk of water pollution nor would it threaten road safety.

6.3. **Planning Authority Response**

6.3.1. None received.

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. This is a 3rd Party appeal against the decision of Monaghan County Council to grant planning permission subject to conditions for a development that effectively consists of the construction of an organic poultry house to accommodate a total of 6,000 birds using a connected ranging area of 6ha and including the installation of a soiled water tank, the construction of a feed silo, upgraded entrance onto the R162, an internal farm roadway to provide an alternative form of access to the applicants existing poultry house which adjoins the north and part of the eastern boundary of the red line site area.
- 7.1.2. The current Monaghan Development Plan recognise the importance of the agricultural industry to the county's economy and contains several policies which seek to support the development agriculture. In addition, the subject lands are not subject to any specific land use zoning objective and forms part of rural location which is characterised by its rural land uses; its rolling drumlin landscape; and, by the scattering of one-off dwellings. I therefore consider that the general principal of the proposed development is acceptable, by reference to the policies and objectives of the current Monaghan Development Plan, subject to safeguards including environmental.
- 7.1.3. In relation to regional and national policy context again the importance of agricultural industry is also strongly supported. The Department of Agriculture, Food and the Marine have a 10-year plan titled 'Food Wise 2025'. This document acknowledged that there are opportunities in the poultry sector to increase efficiencies through increased scale and modern production facilities. As such the applicants desire to increase the scale of his agricultural activities is in general supported subject to standard safeguards.
- 7.1.4. In light of the above, I consider that the substantive planning issues that arise in the grounds of appeal, the assessment of this application and the appeal relate to the following matters:

- Unauthorised Development and Intensification of Unauthorised Development;
- Residential Amenities;
- Visual Amenities;
- Ground Water; &
- Road Safety.

7.1.5. The matter of 'Appropriate Assessment' also requires examination.

7.2. **Unauthorised Development**

7.2.1. The Board, in making its decision is restricted to considering the proper planning as well as sustainable development of the area, having regard to the matters provided for under Section 34 of the Planning and Development Act, 2000, as amended. In addition to this it is also appropriate that the Board in making its decision that they also consider whether there has been a substantial non-compliance with a planning permission granted, having regard to the provisions of Section 35 of the said Act, as amended.

7.2.2. The appellants contend that the applicants existing poultry house, its associated buildings and spaces, which I note the northern portion of the appeal site overlaps with, is a development that has been carried out in a manner that is non-compliant with the conditions attached to its grant of planning permission by the Board under ABP Ref. No. 246752. In this regard they argue that the applicant has failed to comply with the requirements of several of conditions attached to this grant of permission and they therefore raise concern that the proposed development represents intensification of what is an unauthorised development.

7.2.3. Under planning legislation any development which proceeds in breach of conditions laid down in the planning permission is considered to be unauthorised and the owner of the development is susceptible to enforcement action. I am cognisant that enforcement of planning control is the responsibility of the Planning Authority, in this case Monaghan County Council, and under Section 151 of the Planning and Development Act, 2000, as amended, it is an offence to carry out, or to have carried out unauthorised development.

- 7.2.4. Having inspected the site and having had regard to the planning history of the site I consider that the appellants concerns in this regard are of merit and it would appear that a number of substantive conditions attached by the Board in its grant of planning permission have not been implemented and/or complied with.
- 7.2.5. In my view there also appears to be question marks over whether or not in the case of other conditions that the applicant has carried out the permitted development in a manner consistent with safeguards attached to this grant of permission.
- 7.2.6. I raise a concern in this instance that the applicant appears to have displayed a blatant disregard for planning law by his decision to not comply with the conditions attached to the grant of permission by the Board under ABP Ref. No. 246752 and it would appear that critical infrastructure such as providing a safe access onto the R162 which was a requirement under Condition No. 7 will not be now provided unless a grant of permission is provided for this current application with the proposed access under this application now the applicants preference to overcome this lack of compliance.
- 7.2.7. Yet such infrastructure was deemed to be necessary and as I observed from my inspection of the site and the existing entrance that serves the applicants existing poultry house is seriously substandard and hazardous to the extent it effectively has c1 to 2m sightlines in a southerly direction onto the R162.
- 7.2.8. It is also served by a substandard in design road entrance to serve this development and the larger farmstead it forms part of as well as a substandard in width access road.
- 7.2.9. To not provide a safe entrance to serve this development which is now in full operation for c2-years and to use the entrance that was in place prior to the making of this previous application and was deemed to be substandard and not suitable for the development sought not only puts the safety of road users accessing and egressing from this entrance and driveway at risk; it intensifies the volumes of vehicles using this entrance; it intensifies the turning manoeuvres in the vicinity of this entrance on a heavily trafficked regional road putting the safety of road users at risk at a point where sightlines are seriously inadequate in a westerly direction, where the maximum regional road speed limit applies, and, where there are no hard verges.

- 7.2.10. I note that the reason stated for the imposition of Condition No. 7 was *“in the interest of traffic safety”*.
- 7.2.11. By way of the applicant not complying with this condition what has resulted on the site that overlaps the appeal site is a substandard development and one that imposes a substantive risk to public safety, in particular, as said previously road users in its immediate vicinity. It is also not in the interest of safeguarding the efficient and safe operations of the adjoining stretch of the R162, Ballybay to Shercock, Regional Road.
- 7.2.12. I note that Policy NNRP 3 of the current Monaghan County Development Plan, states that the Planning Authority will seek *“to ensure that the traffic carrying capacity and strategic nature of the County’s road network is not adversely affected”* and the Guidelines for Planning Authorities, 2012, state that *“the protection of such capacity and preservation of enhanced safety standards will be important in ensuring that such regional roads can continue to perform important local and regional transportation functions”*.
- 7.2.13. In relation to Condition No. 7 of the grant of permission ABP Ref. No. 246752 I consider that it is not acceptable that the applicants existing poultry farm is operating with such a substantial breach and for the reasons indicated above it can only be considered as not only a substandard development but a development that has been carried out in a non-compliant manner with its grant of planning permission and puts the public directly at risk.
- 7.2.14. In relation to other conditions attached to the grant of permission by the Board under ABP Ref. No. 246752 I raise a concern that Condition No. 3 required that all poultry manure generated in the poultry house permitted was required to be disposed of off-site with the arrangements for the collection, storage and disposal of the same to comply with the requirements of the Department of Agriculture, Food and the Marine, Animal By-Products legislative requirements and all Local Authority guidance on the protection of sensitive waters including water supply sources. The reason stated for this condition reads *“in the interest of public health”*.
- 7.2.15. Under this previous application it indicated that an estimated 126.36 cubic metres of manure will be generated per annum and according to the documentation submitted by the applicant that manure arising within the poultry house would total 88% of total

manure generated. It indicates that this would be stored under the slatted area in a reinforced concrete chamber which has a capacity of 513.6 cubic metres, and it was further indicated that this manure would not be land spread within the landholding and would instead be removed off-site by an authorised contractor for use as a fertiliser.

7.2.16. Based on such assurance it appears that the remaining c12% that would arise in the ranging area would be similar to the bovine activity that the proposed poultry operation would replace, and I note that regard was had to the low stocking level of poultry meet free range classification.

7.2.17. Despite the Board inspector encountering ground conditions described in his report as being *“very soft and wet underfoot with areas of rushes, indicating the poor drainage often associated with drumlin areas”* based on the contentions set out in the application in which the poultry house would be operated and the arrangements proposed for poultry manure he did not consider that the proposed development, if permitted subject to safeguards, would pose a significant risk of groundwater pollution from the range areas.

7.2.18. Having inspected the site and its surroundings, I note that the week prior to my inspection was relatively drive yet the ground conditions on the high through to the lower ground levels of the site were extremely water sodden, there was extensive evidence of water loving plants and the drainage ditches contained high levels of stagnant water.

7.2.19. The groundwater vulnerability of the site is classified as ‘extreme’ and these lands are in the catchment of the Corrybrannan river, which is a tributary for the Dromore River and Erne System.

7.2.20. As set out in Section 5.3 of this report the site is within a 15km radius of several number pNHA’s with the nearest being Dromore Lakes (Site Code: 000001). This pNHA is described as a group of ten main inter-drumlin lakes plus several smaller areas of water stretching along the River Dromore between Cootehill and Ballybay. It is also further described as being containing nice areas of wet woodland and reed swamp and is important for wintering wildfowl population including whooper swans, great crested grebe and lapwings. It is not a landscape with ground conditions and a topography that has the capacity for land spreading of poultry manure of the quantity

and regularity required for either the existing poultry farm or for the much larger poultry house proposed under this application.

- 7.2.21. In my view Condition No. 3 was clearly required for the protection of public health. Moreover, having regard to the environmental sensitivity of this landscape to ground and surface water run off it was also necessary to safeguard the biodiversity of this landscape from any significant additional level of pollution from agricultural practices on this land and having had regard to the OPW Draft Mapping it may also have been considered necessary given the immediate areas propensity of pluvial and fluvial flooding.
- 7.2.22. Similarly, to Condition No. 7, I consider Condition No. 3 was imposed in the interests of sustainable development as well as for the protection of public health and in my view there appears to be a blatant misunderstanding of the requirements, the intention and reasons for Condition No. 3 to be imposed as a limitation to the proposed development granted by the Board.
- 7.2.23. In tandem there also appears to be question marks over whether the applicant sought or agreed water supply and drainage arrangements for the site as was required under Condition No. 2 prior to the commencement of development. I can find no evidence to suggest that there was. This condition was imposed for the stated reason of being "*in the interest of environmental protection and public health.*"
- 7.2.24. Of further concern there is no evidence that would support compliance with Conditions 4 and 5 of the grant of permission ABP Ref. No. 246752 which I also note relates to the arrangements of poultry litter and poultry numbers.
- 7.2.25. Moreover Condition No. 8 of the grant of permission ABP Ref. No. 246752 required that in the first planting season following the commencement of development, the site shall be landscaped in accordance with the scheme submitted to the planning authority on 29th April 2016 and the hedgerow set back shall be planted. Any failures within the planting scheme shall be replaced in the subsequent planting season. The stated reason for this condition was in the interest of visual amenity.
- 7.2.26. The applicant appears to have decided upon himself that this landscaping scheme was not required as he had decided to not to construct the required safe access onto the R162. Yet this condition alongside Condition No. 9 was required to ensure that the proposed development which included what is a significant built structure on

raised ground that is visible from the R162 as well as from other established developments in its vicinity, including dwellings, to lessen the visual impact of the proposed development on the amenities of the area.

7.2.27. I do not consider the appropriate route to seek compliance with unauthorised development is by way of seeking to intensify and to consolidate it having regard to the similar nature of the proposed development now sought.

7.2.28. Therefore, on the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a site that overlaps with the use of which is unauthorised development and a development that has been carried out in a manner non-compliant with the conditions attached to its grant of permission, namely the grant of permission ABP Ref. No. 246752. I consider that the proposed development, if permitted, would facilitate the consolidation and intensification of this unauthorised development. Accordingly, I consider that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances. This reason is substantive in its own right for the Board to refuse planning permission for the development sought.

7.3. Residential Amenities

7.3.1. The appellants raise concerns that the proposed development, if permitted, would result in additional adverse residential amenities to them over and above the operations of the applicants existing poultry house.

7.3.2. The nearest dwelling house to the proposed poultry house is 112m to the rear elevation of an existing dwelling house whose curtilage adjoins part of the southern boundary of the appeal site and with part of the private open space amenity being less than 100m from the southern elevation of the proposed poultry house. There are several other dwellings located between c168m to c365m of the proposed poultry house.

7.3.3. The information submitted with the application and the applicant's further information response does include substantive measures to seek to minimise impact and nuisance on the established residential amenities and other land use activities in its immediate locality. These include seeking to assure appropriate manure and carcass

management and arrangements, flock and feed management, qualitative house design with appropriate aesthetic design.

- 7.3.4. Having visited the area and having regard to the nature of rural activities, I do not consider that odour generation from the proposed facility would be significant subject to appropriate safeguards.
- 7.3.5. Notwithstanding, I am not convinced that an adequate level of assurance has been provided in terms of other nuisances such noise from the ventilation system for the poultry house, noise associated with ongoing operation of the poultry house or malodours particularly when the poultry litter or manure would be removed. Particularly in terms of impact on the adjoining residential property to the south and the residential dwelling on the opposite side of the R162 which is within c168m of the shed structure.
- 7.3.6. The appellants also content that fly infestation is problematic in the area, as a result of ongoing commercial poultry operations by the applicant and that the proposed further poultry operations would exacerbate this problem. Appropriate management including the collection and disposal of dead carcasses, as indicated in the documentation submitted with the application, should ensure that vermin would be kept to a minimum; notwithstanding I did observe that in general there was an excessive level of flies in this area and whilst those on the site are most likely than not related to the use of the land for grazing by cattle having regard to the poor drainage of the site and its setting I consider that there is potential merit in the appellants concerns in this regard. Particularly where the operations are not carried out in accordance with best practice.
- 7.3.7. Despite having regard to the nature of the rural development proposed and the rural setting of the site's setting I do not consider that the information provided with this application demonstrates sufficiently that the residential amenities of the nearest dwellings would not be adversely impacted over and above their existing situation.
- 7.3.8. Should the Board be minded to grant permission I recommend that it should include robust conditions to deal with the cumulative potential adverse impacts that could arise to dwellings within the vicinity of the proposed development.

7.4. **Visual Amenities**

- 7.4.1. The appellants contend that the proposed development, if permitted, would be visually obtrusive on elevated ground when viewed from neighbouring residences and from the public domain of the R162. In response to the appeal, the applicant asserts the proposed development would not cause significant injury to the character of the area or amenities of property in the vicinity. The site, its immediate and wider visual curtilage does not form part of any preserved or protected views.
- 7.4.2. Notwithstanding, Section 15.16 of the Development Plan indicates that any new buildings being proposed within the countryside should not further erode the rural character of the area and it acknowledges that new buildings when considered with other existing and approved buildings could have a detrimental impact to the rural character. It also states that: *“the assessment of the impact of new buildings on the rural character will be considered from critical views along the public roads”*; and, that: *“the impact of ancillary works associated with a new building will also be assessed”*. In addition, Policy RCP 1 of the said Plan states that the Planning Authority shall: *“only grant planning permission for a building in the countryside where it is demonstrated that the development will not cause a detrimental impact or further erode the rural character of the area”*.
- 7.4.3. In relation to the proposed development I raise concerns that the applicant has not provided any robust justification as to why he has decided to locate the proposed poultry house and its associated infrastructure at a location remote from the farmstead and where the existing poultry house is (Note: c135m). In so doing this fragments the applicant’s agricultural buildings and associated infrastructure within this rural landscape setting. It also requires additional access arrangements within the landholding to connect the applicants existing and proposed poultry houses within the landholding and onto public road network which in this case is onto a regional road that is designated under Table 7.3 of the Development Plan as a ‘Strategic Non-National Route’ and it also results in additional access points being sought on top of existing accesses serving the applicants farmstead and the fields in between it and the proposed access to serve the sight. Inevitably requiring more alterations to the rural landscape through the provision of access points, internal roads, loss of hedgerows and the like.

- 7.4.4. In relation to 'Strategic Non-National Route' I note that Section 7.9 of the said Plan defines these as providing strategic linkages to the main settlements within the county and the wider border region and/or carry significant volumes of traffic.
- 7.4.5. During my site inspection I observed a heavy volume of traffic on this route and I also observed that the existing poultry farm which lies to the north of the proposed poultry farm also on elevated ground levels within this drumlin landscape lacks any robust or meaningful screening is highly visible from this regional road for traffic journeying northwards as well as from viewed from dwellings in its immediate locality to the west, south and east.
- 7.4.6. The proposed fragmentation and piecemeal placement of the poultry house on a high point relative to the R162 in what is a rolling drumlin landscape together with the requirement for a new internal access road linking to the existing poultry farm building which is indicated as having a ridge height of c7m. a width of c18.9m and a length of 92.5m alongside the interventions including the taller feed silo despite it being of the appearance, shape and a profile one associates with larger agricultural buildings together with their lack of visual integration with other agricultural buildings within this section of the applicants landholding would in my view diminish this rural landscape setting. Further, the lack of implementation of the required landscaping as part of the previous granted permission alongside the lack of any robust landscape scheme under this application or any consideration of minimising the need for extensive internal roads through to consolidating and minimising access points onto the R162 associated with the applicants agricultural activities in my view exacerbates the level of visual impact the proposed development would give rise to and also exacerbates its potential for greater cumulative adverse visual impact on this rural landscape.
- 7.4.7. I am not satisfied in this case that the proposed development would be consistent with Policy RCP 1, in particular having regard to the proposed developments unduly prominent elevated position within its landscape setting; its failure in design concept to respect the traditional farmstead approach to settling agricultural buildings that is characteristic in this rural landscape setting, it would result in a build up of similar large scale monolithic buildings in a manner that would detrimentally impact on the rural character of the area, and the impact of the ancillary works to facilitate the proposed poultry farm together with that required for the existing poultry farm which

are excessive relative to the scale and nature of the existing as well as proposed poultry operations would result in an unnecessary level of visual deterioration of this rural locality.

- 7.4.8. Should the Board be minded to grant permission I advise that they seek to reduce the visual impacts of the proposed development by way of appropriately worded conditions to deal with the concerns raised above.

7.5. Potential Pollution of Ground Water

- 7.5.1. The proposed development sought under this application effectively seeks planning permission for the intensification of agricultural activities on an existing farm. Such activities have the potential to give rise to water pollution if appropriate site-specific safeguards are not included and/or if when permitted not carried out or managed in accordance with such safeguards.
- 7.5.2. On the day of my site inspection I observed that the ground conditions despite the lack of any large quantum of rainfall in the week proceeding it were extremely wet and spongy underfoot. There was an abundance of water loving plants on the low-lying areas of the site and the deep-water ditches containing stagnant water. It appeared that the site had been used for grazing cattle previous to my visit of the site but there were none present on the day, but their recent presence was evident from the poached grounds, the roof shaped indented imprints in the ground and the levels of manure. I also observed that rushes were very prevalent within the site area and on adjoining as well as neighbouring land. It is generally accepted that these are indicative in land where drainage is poor.
- 7.5.3. The subject site also adjoins land on part of its eastern boundary that are indicated in the OPW Draft Flood Maps as: "Pluvial Extreme Event: 36c" and adjoining part of the north eastern most boundary land indicated in the said maps as: "Pluvial Indicative 1% AEP (100 year) flood. Within close proximity to the north, north-west, south-east, south and south-west of the site there are pockets of land indicated with such events. In addition, the watercourse within 120m to the south of the site in the said maps are indicated as: "Fluvial – Indicative 1% AEP (100-year)" event with watercourses in the near vicinity of the site having the same fluvial indicative events.
- 7.5.4. As set out in Section 5.3 of this report within 15km radius of the site there are a significant number of pNHAs with the closest located c2km to the east of pNHA

Dromore Lakes. The site itself is within the catchment area of the Corrybrannan, a tributary of Dromore and Erne. The status of which is identified as 'poor' with the objective to restore by 2021.

- 7.5.5. The documentation accompanying this application indicates that the groundwater vulnerability is 'extreme', and the aquifer is classified as being 'generally unproductive except for Local Zone (PI). It is unclear whether adjoining and neighbouring dwellings are supplied by group water schemes or private wells.
- 7.5.6. The documentation also indicates that the red line area of the site which it indicates as having a stated area of 2.562ha would be adjoined by a separate 6ha range area for the birds. This range area relative to the site itself does not form part of the application site; however, the documentation on this is not fully clarified.
- 7.5.7. In terms of waste management, the documentation indicates that the only waste to be generated would be dead birds/broken eggs which they contend would be collected by College Proteins on a regular basis and the small number of cardboard trays together with general waste would be disposed of to landfill/recycling as appropriate.
- 7.5.8. In terms of pollution management, it is indicated that the proposed development would have a >15months storage capacity and that all manure is to be emptied out of the house at the end of each cycle with the same to be removed off site by a registered contractor for use elsewhere. In addition, the submitted documentation indicates that any watercourses within the range area would be fenced off to exclude access.
- 7.5.9. As noted, the appeal site and most of the adjoining land appears to be used predominantly for grazing cattle and the documentation indicates that the proposed development would replace this activity as well as indicates that in doing so the hens at the stocking rate proposed would be significantly below the 170Kg organic N/Ha permitted by S.I. 605 of 2017.
- 7.5.10. Whilst I am cognisant that the stocking levels are low due to the proposed free-range production and it would appear that the run-off from paved yard areas would be directed to the soiled water tanks with the surface water dealt with separately, I consider that should the Board be minded to grant permission that any grant should include adequate safeguards to negate the risk of groundwater pollution in what is a

site and setting that is highly vulnerable due to its inherent characteristics for water pollution and for such development if not operated in accordance with standards and requirements to be to public health, the water quality of watercourses in the vicinity through to have the potential to adversely impact pNHA's in its vicinity.

7.6. Road Safety

- 7.6.1. I have previously raised concerns for the creation of additional access points onto what is a heavily trafficked regional road and the conflicting information on file in relation to previously granted existing poultry farm on the applicants land for which safe access was required by way of condition onto the R162 having regard to the inadequate access that was serving this site but this has not been provided.
- 7.6.2. The proposed upgraded agricultural entrance onto the R162 is at a point where despite the undulating horizontal alignment of the road and the lack of a hard verge the road is relatively straight. As such the applicant in the documentation submitted that they are able to provide the required sightlines onto the R162.
- 7.6.3. Having regard to the level of vehicle movements associated with the development I consider that it would be appropriate that one safe access would be a more appropriate approach to serving the existing and proposed poultry farm should the Board be minded to grant permission. The consolidation of the existing and proposed poultry activities so that the impacts of these buildings; their associated internal access roads and interventions to the roadside boundary also would require lesser landscaping visual buffering. Moreover, it would reduce the impact on the R162 having access and egress for the poultry farming activities consolidated at one point.
- 7.6.4. Subject to appropriate safeguards and a more co-ordinated approach in terms of access, egressing onto the public road network and on the applicants landholding I consider that there is capacity on the R162 which at this point is in a good condition to accommodate the additional volume of traffic the proposed development would generate and I do not consider that it would give rise to any undue traffic hazard.

7.7. Environmental Impact Assessment (EIA)

- 7.7.1. On the matter of EIA the applicant describes the proposed development as a: "*stand alone enterprise that is below the EIA threshold*". The relevant threshold of development in this instance is Class 1e(i) of Part 2 of Schedule 5 of the Planning &

Development Regulations, 2001, as amended. This Class relates to installations for intensive rearing of poultry that would have more than 40,000 places. This proposal relates to a poultry house that has the maximum capacity of accommodating 6,000 birds and I note that the existing poultry unit relates to a poultry house that the planning history documents indicates has a capacity to accommodate a maximum of 3,000 birds. When considered individually or cumulative the existing and proposed development is subthreshold and as such does not require a mandatory EIS.

- 7.7.2. Having considered the criteria for determining whether a development would or would not be likely to have significant effects on the environment as set out in Schedule 7 of the Planning & Development Regulations, 2001, as amended, alongside having regard to the scale, nature and extent of the proposed development as set out in its accompanying documentation, the methodology set out for managing waste, mitigating pollution and nuisances, the location of the site and the resultant lack of potential significant effects on the environment, I consider that an EIA of the proposed development is not required in this case.

7.8. Appropriate Assessment

- 7.8.1. As set out in Section 5.3 of this report there are a significant number of pNHAs within a 15km radius of the site.
- 7.8.2. There are no Natura 2000 sites within a 15km radius of the site.
- 7.8.3. There are small watercourses in the vicinity of the site and the proposed range area. Buffer areas are proposed to safeguard these where appropriate and the applicant proposes to remove the poultry manure which will be rather than land spreading it. This is as indicated under the previous permitted adjoining poultry house unit and associated ranging area bounding part of the northern boundary of the site.
- 7.8.4. It would appear that surface water run-off from the poultry house will be collected and will be land spread in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014.
- 7.8.5. The documentation submitted also indicates that foul effluent generated shall be fully contained and transported off-site by a licensed contractor. Subject to this including the run-off from cleaning of paved areas together with the proposed surface water drainage arrangements, the significant separation distance between the appeal site and nearest European sites, I am satisfied that the proposed development, either

individually or in combination with other plans and projects, would not be likely to have a significant effect on any European site in view of their conservation objectives. I therefore consider that a Stage 2 Appropriate Assessment and submission of a Natura Impact Statement is not required in this case.

8.0 Recommendation

8.1. I recommend that planning permission is **refused** for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The proposed development would contravene materially conditions to an attached to an existing permission for development namely, condition number ABP Ref. No. 246752 attached to the permission granted by An Bord Pleanála on the 3rd day of October, 2016, and that the proposed development would comprise an extension and intensification of this unauthorised development. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances
2. Having regard to the topography of the site, the elevated positioning of the proposed development poultry building, together with its dimensions and scale, the requirement for an extensive internal access road and the proposal for an upgrading of a agricultural field access point onto the heavily trafficked R162, the fragmented and piecemeal location of the proposed poultry farm relative to other agricultural buildings on this landholding including an existing poultry house which was permitted including a condition to provide a safe new access onto the R162 and an additional internal access road both of which have yet to be provided. it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape due to its cumulative impact when considered against other buildings within this landscape, would militate against the preservation of the rural environment in a manner that is inconsistent with Policy RCP 1 of the Monaghan County Development Plan, 2019 to 2025, and

would set an undesirable precedent for other such prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector

27th day of November, 2019.