



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307382-20

#### Development

1). Retain and complete as necessary for a slatted tank, animal housing and all associated ancillary works and services; 2). permission to cut back steel uprights at slatted feeding area; 3) permission to construct new crush in collecting yard.

#### Location

Grennan, Attanagh, Co.Laois.

#### Planning Authority

Laois County Council

#### Planning Authority Reg. Ref.

#### Applicant(s)

Patrick Lalor

#### Type of Application

Leave to Apply for Substitute Consent under S.177C

#### Date of Site Inspection

12<sup>th</sup> October, 2021

#### Inspector

Stephen Kay

## 1.0 Site Location and Description

- 1.1. The site of this application for leave is located in a rural area approximately 2km to the east of Durrow in County Laois and is accessed off a local road that connects Attanagh with the N77 to the north of Durrow. The village of Ballinakill is located c.5km to the north east.
- 1.2. The site is connected to the local road to the north east by a laneway. This access also serves residential / other farm buildings that are in third party ownership located immediately to the north east of the site.
- 1.3. The Owenbeg River is located c.1.5km to the east of the site at the closest point and the river in the vicinity of the site is located within the River Barrow and Nore SAC and the River Nore SPA sites. The River Nore runs in a north – south direction approximately 1.2km to the west of the site.
- 1.4. The site comprises a farmyard complex associated with a dairy farm and comprises a collection of existing farm buildings. The site has a stated area of 0.95 ha and includes a disused farm house and original stone built farm buildings to the east of the site. These elements front onto the top of the cul-de-sac road and the adjoining farmyard and house in third party ownership. To the rear of these buildings, and towards the west of the site, there are a number of newer farm buildings. The total floor area of these farm buildings is approximately 708 sq.m
- 1.5. On the western side of the site, a large agricultural shed has been erected which has a stated floor area of 1,266sq.m. The planning status of this building is the basis of this leave to apply for substitute consent application and it would appear that this structure was erected on the site in c.2016. .

## 2.0 Proposed Development

2.1. The development proposed on the site which is the subject of the current request for leave to apply for substitute consent can be summarised as follows:

- Retention and completion of slatted tank on the site, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steel uprights at slatted feeding area, and all associated ancillary works and services. The stated floor area of the slatted shed and ancillary areas is 1,266 sq. metres. The application documentation states that the combined floor area of the pre-existing farm buildings on the site is 708 sq. metres.
- permission to cut back steel uprights at slatted feeding area.
- permission to construct new crush in collecting yard on the southern side of the shed.

## 3.0 Planning History

The following planning history relates to the subject site at Grennan, Attanagh:

Laois County Council Ref. 19/200 – Application for the following works not determined by the Planning Authority on the basis that the application involved an element of retention and that it was considered such as to have required appropriate assessment and that therefore, under the provisions of s.34(12) of the Planning and Development Act, 2000 (as amended), the Planning Authority is precluded from considering the application:

- (1). retain and complete as necessary for a slatted tank, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steel uprights at slatted feeding area; and all associated ancillary works and services;
- (2). permission to cut back steel uprights at slatted feeding area;
- (3) permission to construct new crush in collecting yard on site at Grennan, Attanagh, Co. Laois.

It is noted that prior to making the above determination, the Planning Authority requested further information and commissioned an independent assessment of the requirement for appropriate assessment in this case which was undertaken by SLR Consulting.

The development proposed under this application comprises the basis of the subject application for leave to apply for substitute consent before the Board.

Laois County Council Ref. 17/218; An Bord Pleanála Ref. ABP-300315-17 – Permission granted by the Planning Authority and refused on appeal to the Board for development comprising the following:

- retain and complete as necessary for a slatted tank, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steep uprights at slatted feeding area, and all associated ancillary works and services; permission to cut back steel uprights at slatted feeding area; permission to construct new crush in collecting yard at the southern side of the shed.

Permission was refused by the Board for two reasons, the first relating to the serious negative impacts on residential amenity that would arise by reason of noise, traffic and odour and that the scale of structure proposed to be retained has not been adequately justified and secondly that, on the basis of the information presented and in the absence of an appropriate assessment screening report, the Board cannot be satisfied that the proposed development would not be likely to have a significant effect on European sites, specifically the River Barrow and River Nore SAC (site code 002162) and the River Nore SPA (site code 004233) and that the Board is therefore precluded from granting permission.

Laois County Council Ref. 02/721 – Permission granted by the Planning authority for the construction of livestock accommodation over existing slats.

The following planning enforcement history is referenced on the appeal file:

Warning letter issued by the Planning Authority on 17<sup>th</sup> October, 2016 requesting the cessation of any unauthorised works on the site.

Laois County Council Ref. UD Ref 16/76 - Enforcement notice issued on 7<sup>th</sup> March 2017 requiring the cessation of any unauthorised works and the demolition of any unauthorised structures. Stated by the first party that the application for retention ref. 17/218 was submitted on foot of this notice.

## 4.0 Statutory Provisions

4.1. **Section 34(12) of the Planning and Development Act, 2000** (as amended) states as follows:

*A planning authority shall refuse to consider an application to retain unauthorised development of land where the authority decides that if an application for permission had been made in respect of the development concerned before it was commenced the application would have required that one or more than one of the following was carried out—*

*(a) an environmental impact assessment,*

*(b) a determination as to whether an environmental impact assessment is required, or*

*(c) an appropriate assessment.*

4.2. **Part XA of the Planning and Development Act, 2000** (as amended) relates to substitute consent.

4.2.1. **Section 177A** provides for applications for substitute consent and cites a number of interpretations or definitions for the purposes of this Part. S.177A(1) states that 'exceptional circumstances' referred to in this section shall be construed in accordance with section 177D(2).

4.2.2. **Section 177B** provides that where a planning authority becomes aware that a development which was granted planning permission by the planning authority would have required an EIA, determination as to whether an EIA was required or an AA and a court within the state of the ECJ had invalidated a grant of permission in relation to that development the planning authority must inform the developer that an application for substitute consent should be made to the Board. The section sets out timelines for an application and subsequent procedures where an application is or is not submitted on foot of such a notice.

4.2.3. **Section 177C** provides that in the absence of a notice under 177B the owner or occupier of land where development has been carried out where that development would have required an EIA, determination as to whether an EIA was required, or an AA may apply to the Board for substitute consent if:

- There is a material defect in a permission as determined by a court within the state, the ECJ because of the absence or inadequacy of an EIA or AA, or,
- any error of fact or law or a procedural error, or,
- where the applicant is of the opinion that exceptional circumstances exist, which would make it appropriate to permit the regularisation of the development by way of an application for substitute consent.

4.2.4. Section 177C(3) sets out the information to be submitted to the Board as part of their leave to apply application. These include any documents the applicant for leave considers relevant, in the case of a determination of whether EIA was or is required , the information specified in Schedule 7A, and any additional information or documentation that may be requested by the Board.

4.2.5. **Section 177D(1)** states that the Board shall only grant leave to apply for substitute consent as sought under s.177C where it is satisfied that an EIA, a determination regarding EIA or an appropriate assessment was or is required and the following requirements are also met:

- (a) That a permission granted by the Board or a planning authority is illegal, invalid, or otherwise defective by reason of (i) any material contained or omitted from the application (including EIAR and / or NIS), or (ii) any error of fact or law or procedural issue. **or**

(b) That exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

4.2.6. **Section 177D(1A)** states that where the Board makes a determination for the purposes of this section as to whether an EIA is required it shall have regard to a number of criteria, including, inter alia, the criteria set out in Schedule 7 of the Regulations and information submitted pursuant to Schedule 7A of the Planning and development Regulations, 2001. It also states that in respect of development located on or in, or which has the potential to impact on a European site, that the Board would have regard to this fact in making its determination on the need for EIA.

4.2.7. **Section 177D(2)** sets out the following matters that the Board shall have regard to in its consideration of whether exceptional circumstances exist. These are as follows:

(a) whether regularisation of the development would circumvent the purpose and objectives of the EIA Directive or Habitats Directive.

(b) whether the applicant had or could reasonably have had a belief that the development was not authorised,

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of environmental impact assessment or an appropriate assessment and to provide for public participation in such assessments has been substantially impaired.

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from carrying out or continuance of the development,

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated.

(f) whether the applicant has complied with previous planning permissions or has previously carried out unauthorised development.

(g) such other matters as the Board considers relevant.

- 4.2.8. **Section 177D(3)** states that in deciding whether to grant leave to apply for substitute consent the Board shall have regard to any information furnished by the applicant under s.177C(3), s.177C(3A) and information sought from the planning authority under s.177C(5).

## 5.0 The Grounds for the Application

- 5.1. The following is a summary of the main issues and information contained in the application for leave to apply for substitute consent submitted by Emma Pillion Planning on behalf of the first party, Patrick Lalor:

### ***EIA***

- That the letter received from Laois County Council in respect of Ref. 19/200 states that the planning authority must refuse to consider the application to retain the development as if an application had been made for the development before it was commenced then the application would have required an appropriate assessment to be undertaken.
- That having regard to the nature and scale of the development, there is no requirement for either a determination in respect of EIA or for EIA having regard to Article 109(2) of the Regulations. Submitted therefore that the likelihood of significant effects on the environment can be excluded for the purposes of EIA.
- That the development would not be likely to have significant effects on the environment having regard to the Schedule 5 criteria.

### ***Appropriate Assessment***

- That application ref. 19/200 was accompanied by a Stage 1 Appropriate Assessment which identifies that there are three European sites located within 10km of the application site.



- That the development site is not located within any European site, however the spread lands are partially located within the River Barrow and River Nore SAC and adjacent to the River Nore SPA.
- That the Stage 1 Appropriate Assessment submitted with application Ref. 19/200 prepared by Whitehall Environmental concludes that the development for which retention is sought would '*have no impacts upon the Natura 2000 sites*' and that there is therefore not any need '*to proceed to Stage 2 of the appropriate assessment process*'. The appropriate assessment screening assessments undertaken on behalf of the Planning Authority both conclude that there is insufficient evidence to conclude that there would not be likely significant effects on a European site.
- Concluded that appropriate assessment is required as it cannot be excluded on the basis of objective scientific information that the development had or would have a likely significant effect on the River Barrow and River Nore SAC, having regard to the conservation objectives for the site. It is therefore submitted that the development does qualify for consideration for leave to apply for substitute consent being development for which AA is required.

### ***Exceptional Circumstances***

#### Circumvention of the Purposes and Objectives of the EIA and Habitats Directives

- Given that EIA was and is not required then the development would not circumvent the EIA Directive.
- That the scale of development in the context of the existing (expanded) farm holding is not excessive. It is therefore considered that the development would not circumvent purposes and objectives of the Habitats Directive.

#### Reasonable Belief that the Development was not Unauthorised

- That the applicant was aware that the form of development the subject of the current leave application was not liable for any form of grant aid and was wrongly informed that once the development was more than 100 metres from a road and 30 metres from any house that planning permission was not required.

- That the applicant was informed by the councils enforcement section that the appropriate course of action was to apply for retention permission.
- That given the location of the site in a rural area and to the poorly advised nature of the applicant, it is reasonable to consider that the applicant was unaware that the development was unauthorised.

Whether the Ability to Carry out EIA and / or AA and to Provide for Public participation has been Substantially Impaired.

- That there is no requirement for EIA.
- It is not considered that there is any impairment to carrying out AA including providing for public consultation.

Actual or Likely effects on the Environment or on the integrity of a European Site from the Carrying out or Continuation of the Development.

- Given that EIA is not required no issues relation to EIA arise.
- That the possible adverse effects on the integrity of a European site arise from the proposed spreading of effluent and the proximity of these spread lands to the European sites. A source – pathway – receptor model indicated that the impacts could not be excluded and that a Stage 2 Appropriate Assessment was therefore required.
- Stated that the applicant has not spread on the lands identified as being closest to the SAC since the shed was developed and that lands located on the western side of the farm within proximity of the river and SAC have been excluded from the annual rotation of slurry since 2016.
- Contended that the continuation of development could be remediated by way of preparation of a specialist surface water management plan for the site and the use of alternative spread lands that do not have direct or indirect effects on the SAC.

### Extent to Which Significant Effects on the Environment or Adverse Effects on the Integrity of a European Site can be Remediated

As noted above, given that the spread lands closest to the SAC have not been used since the development was undertaken in 2016 the impacts on the environment to date have been limited. Future impacts could be remediated by the preparation of a surface water management plan and the use of alternative spread lands.

### Whether the Applicant has Complied with Previous Permissions and Degree of Unauthorised Development.

- Stated that the applicant has no history of past failures to comply with planning permissions. A full list of all planning history relating to the subject site and the applicants other farm and dwelling are detailed at s.5.0 of the request. The only enforcement action recorded on any of his sites relates to the subject application for the retention of the agricultural shed and ancillary works, (Ref. 19/200).
- That the applicant also has a clean history with regard to the Department of Agriculture Guidelines and compliance with his Teagasc Nutrient Management Plan.

### Other Relevant Matters

- That there is a long history of farming of the site of the development and OS maps (copies submitted with the application) indicate the fact that there has been a historic presence of farmyards on both the applicants land and the adjoining farm holding owned by the appellant in the previous Board decision (Ref. ABP-300315-17).
- These maps show that the farmyard has not extended beyond the original field boundaries or what might reasonably be expected.
- That the applicant has made every effort to comply and co-operate with the Planning Authority in the process including the submission of applications and engagement of consultants.

In conclusion, it is submitted that exceptional circumstances do exist in this case and it is requested that leave to apply for substitute consent would be granted.

The request for leave is accompanied by a number of attachments including:

- Letter from Laois County Council in respect of Ref. 19/200 stating that the planning authority cannot consider the application as it relates to retention and that it is determined that AA was required.
- Copy of NIS prepared to accompany leave to apply for substitute consent application.
- Copies of documents relating to Refs. 17/218 and 19/200
- Letter from applicant (Mr P. Lalor) setting out the circumstances of the case.
- Letter from son and daughter of the applicant setting out the circumstances of the case.
- Letter from Barnes Noble Limited clarifying animal numbers in response to issue raised by inspector in Ref. 17/218 (ABP Ref. ABP-300315-17).

## **5.2. Planning Authority Response**

The response received from the Planning Authority states as follows:

- That the planning authority concluded that an appropriate assessment was required in respect of the proposed development,
- That the planning authority was unable to further consider the application on the basis of the provisions of s.34(12) of the Planning and Development Act, 2000 as amended) as there was a retention aspect of the application,
- That the Planning Authority did not consider that an EIA was required for the proposed development.

## **6.0 Assessment**

### **6.1. Introduction**

- 6.1.1. This is an application under section 177C of the Planning and Development Act 2000, as amended, whereby the owner or occupier of land to whom no notice has been issued by a planning authority in relation to unauthorised development may make an application for leave to apply for substitute consent. In the case of the subject site, the applicant applied for planning permission and was refused by the Planning Authority under Kildare County Council Ref. 19/200. No notice has been issued by the Planning Authority.
- 6.1.2. The first test that must be undertaken is that it is only open to the Board to grant leave to apply for substitute consent under s.177C where it is satisfied that an EIA, a determination regarding EIA or an appropriate assessment was or is required.
- 6.1.3. The following sections of this assessment consider the issue of requirement for EIA or determination of the need for EIA and requirement for appropriate assessment. The assessment then goes on to consider the exceptional circumstances put forward by the applicant.

### **6.2. Need for EIA**

- 6.2.1. Section 177D(1A) states that where the Board makes a determination for the purposes of this section as to whether an EIA is required it shall have regard to a number of criteria, including, inter alia, the criteria set out in Schedule 7 of the Regulations and information submitted pursuant to Schedule 7A of the Planning and Development Regulations, 2001. It also states that in respect of development located on or in, or which has the potential to impact on a European site, that the Board would have regard to this fact in making its determination on the need for EIA.
- 6.2.2. With regard to planning history, I note the fact that under Ref. ABP-300315-17 the Board refused permission for development of the same form as that which is the subject of the current leave to apply application. As part of that assessment, the Board did not identify that an EIA was required and there was no specific screening for EIA undertaken.

- 6.2.3. The submission on behalf of the applicant in the current case states that having regard to the nature and scale of the development, there is no requirement for either a determination in respect of EIA or for EIA having regard to Article 109(2) of the Regulations. It is further submitted that the likelihood of significant effects on the environment can therefore be excluded for the purposes of EIA.
- 6.2.4. My assessment is that the form of development proposed, and which is the subject of this leave to apply application, is such that it would not be of a class for the purposes of EIA as per the classes of development set out in the Fifth Schedule of the Planning and Development Regulations, 2001 (as amended). No mandatory requirement for EIA therefore arises and there is also no requirement for a sub threshold assessment.
- 6.2.5. Notwithstanding this view, using the headings set out in Schedule 7 of the Planning and Development Regulations, 2001 (as amended), the scale of the shed structure on the site is not exceptional or such that it would combine with other existing or permitted development to result in a significant concentration of development in this location. The shed and associated uses do have the potential to generate waste, pollution, and nuisance, however these impacts are not considered to be excessive or such that the form and scale of development proposed would justify the preparation of an EIAR. I note that under Section 177D(1A), in making a determination as to the need for EIA, the Board should have regard to the potential to impact on a European site. The need for appropriate assessment is addressed below, however I do not consider that the potential impacts on a European site are such as to trigger the requirement for EIA.
- 6.2.6. I therefore consider that the requirement relating to the need for EIA or determination regarding EIA set out in Section 177D(1) has not been met and that the Board cannot consider a grant of leave to apply for substitute consent on the basis of a requirement for EIA or a determination regarding EIA being required.

### **6.3. Need for Appropriate Assessment**

- 6.3.1. Under case Ref. ABP-300315-17 the Board determined that development, which was identical to that the subject of the current application for leave to apply for substitute consent, was such that on the basis of the information presented and in the absence of an appropriate assessment screening report, the Board could not be satisfied that the proposed development would not be likely to have a significant effect on European sites, specifically the River Barrow and River Nore SAC (site code 002162) and the River Nore SPA (site code 004233) and that the Board is therefore precluded from granting permission. The Board has therefore previously determined that a screening for appropriate assessment is required and that potential adverse effects on European sites cannot be excluded.
- 6.3.2. Under case Ref. 19/200, the Planning Authority have also made a determination that the development which is the subject of this leave application would be such as to have required appropriate assessment and that therefore, under the provisions of s.34(12) of the Planning and Development Act, 2000 (as amended), the Planning Authority is precluded from considering the application. It is noted that prior to making the above determination, the Planning Authority requested further information and commissioned an independent assessment of the requirement for appropriate assessment in this case which was undertaken by SLR Consulting.
- 6.3.3. I note the content of the applicants response to further information submitted in respect of Ref. 19/200 and the content of the Technical Review of Appropriate Assessment Reporting prepared by SLR Consulting on behalf of Laois County Council. The response to further information sets out a number of factors including that no additional spread lands have been used since the development was completed in 2016 and also setting out potential mitigations that could be implemented in the form of a water management plan and restriction on the extent of spread lands. These issues are noted, however I consider that they are clearly mitigations which cannot be taken into consideration in screening for appropriate assessment. The submissions of the applicant have also accepted the fact that a Stage 2 appropriate Assessment is required.

6.3.4. In conclusion, given the nature and location of the development and in particular the amount of material proposed to be land spread and the proximity of the site to the River Barrow and River Nore SAC (site code 002162) and the River Nore SPA (site code 004233) and to the conservation objectives of these sites which include habitats and species that are sensitive to water quality, I agree with the conclusions reached by the Board under Ref. ABP-300315-17 and the Planning Authority under Ref. 19/200 that the proposed development is such that it is likely to have significant effects on European sites, specifically the River Barrow and River Nore SAC site, in light of its conservation objectives and such that a Stage 2 appropriate assessment is required to be submitted.

6.3.5. I therefore consider that the requirements of Section 177D(1) is met in that the Board is satisfied that an appropriate assessment was or is required and states that it is therefore open to the Board to grant leave to apply for substitute consent subject to their being exceptional circumstances.

#### 6.4. **Exceptional Circumstances**

6.4.1. The exceptional circumstances to which the Board must have regard in making a determination on an application for leave to apply for substitute consent are set out in Section 177D of the Planning and Development Act, 2000 (as amended). The following sections set out the exceptional circumstances as listed in Section 177D(2) and provides an assessment of the applicability of each to the subject case.

#### ***“Whether the regularisation of the development would circumvent the purposes and objectives of the EIA Directive or the Habitats Directive”***

6.4.2. This application for leave to apply for substitute consent arises from a decision by the Board that the development proposed for retention under ABP-300315-17 could not lawfully be considered due to the requirement for appropriate assessment and due to the decision of the Planning Authority under Ref. 19/200 that the application could not be considered in light of the Section 34(12) of the Planning and Development Act 2000, as amended, because that development would have required AA.



- 6.4.3. Any consent issued for the proposed development would require that an appropriate assessment would be undertaken and submitted as part of the application. In this regard, the documentation submitted with the leave to apply application includes a Stage 2 appropriate assessment report which it is proposed to submit in the event that leave to apply is granted. This report would be considered as part of the Stage 2 appropriate assessment undertaken by the Board.
- 6.4.4. In terms of circumventing the purpose of the Habitats Directive I also note the statement of the applicant that the lands located in closest proximity to the SAC have not been used for the spreading of slurry connected with the proposed development and that the lands surrounding the site have been the subject of spreading for many years prior to the construction of the shed the subject of this leave to apply application and that overall level of such spreading have not varied significantly over these years. The spreading of slurry is clearly an aspect of the development for which leave to apply is sought that has potential indirect effects on surrounding European sites, however the farming activity, including land spreading, has been undertaken on the site for a significant number of years. The degree to which the development for which retention is sought would lead to additional effects on the SAC is therefore potentially significantly less than would be the case with a new development.
- 6.4.5. With regard to EIA, I do not consider that the form of development which would be the subject of the application for substitute consent is of a class for the purposes of EIA and therefore no requirement for the submission of an EIAR or carrying out EIA arises in this case. Notwithstanding this interpretation, as set out above, I do not consider that the characteristics, location, or types of potential impacts arising are such that EIA is required.
- 6.4.6. Having regard to the above, I conclude that an application for substitute consent which would include a remedial Natura Impact Statement and carrying out of AA would not circumvent the objectives of either the EIA Directive or the Habitats Directive.

***“Whether the applicant had or could reasonably have had a belief that the development was not unauthorised”***

- 6.4.7. As part of the leave to apply application the applicant has set out the background to the case and specifically the fact that they sought advice regarding the planning status of the proposed shed from a planning professional and also, post construction, that they were advised by the Planning Authority that the most appropriate course of action was an application for retention. The fact that the shed structure is separated from roads and third party properties by the distances prescribed in the exempted development regulations is noted and in the absence of any potential impact on a European site I consider that a reasonable case has been presented that the applicant did not believe that the development required planning permission. Details of the sequence of events relating to this issue is provided in the letters on file from the applicant and also the applicants son and daughter in law.
- 6.4.8. Having regard to the above, I consider it is reasonable to consider that the applicant was unaware that the development was unauthorised.

***“Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired.”***

- 6.4.9. As set out above, the nature of the development is such that I do not consider that the development is of a class for the purposes of EIA. Notwithstanding this, I do not consider that the characteristics, location, or likely impacts arising from the development are such that EIA is required. I do not therefore consider that the ability to carry out EIA and to provide for associated public participation has been substantially impaired.
- 6.4.10. With regard to appropriate assessment, also as set out above, the applicant has prepared a Stage 2 appropriate assessment in respect of the development which it is proposed would accompany an application for substitute consent should leave be granted. Any such application for substitute consent would provide for public consultation and submissions on any aspect of the application including the submitted appropriate assessment and issues relevant to the assessment to be

undertaken by the Board. It is therefore my opinion that the ability to carry out AA including providing for public consultation has been substantially impaired in this case.

***“The actual or likely significant effects on the environment or adverse effects on the integrity of a European Site resulting from the carrying out or continuation of the development”***

- 6.4.11. As set out above, the nature of the development is such that I do not consider that the development is of a class for the purposes of EIA. Notwithstanding this, I do not consider that the characteristics, location, or likely impacts arising from the development are such that EIA is required.
- 6.4.12. With regard to appropriate assessment and the impact of the development on the integrity of any European site, the planning history of the site is such that the Board determined that the development proposed for retention under ABP-300315-17 could not lawfully be considered due to the absence of a screening assessment and that the Board could not conclude that the development would not have significant effects on a European site. Similarly, the decision of the Planning Authority under Ref. 19/200 was that the application could not be considered in light of the Section 34(12) of the Planning and Development Act 2000, as amended, because it was concluded that significant effects on a European site could not be ruled out and that the development therefore required AA.
- 6.4.13. In neither the assessment undertaken by the Board under ref. ABP-300315-17 or by the Planning Authority under Ref. 19/200 was it concluded that the carrying out or continuation of the development would have an adverse effect on any European site. In the event that leave to apply for substitute consent is granted then the application would be accompanied by a remedial NIS and would be the subject of appropriate assessment.
- 6.4.14. I therefore conclude that granting leave to make an application for substitute consent would facilitate the assessment of actual or likely adverse effects on the integrity of a European Site resulting from the carrying out or continuation of the development.

***“The extent to which significant effects on the environment or adverse effects on the European site can be remedied”***

- 6.4.15. Any application for substitute consent would be accompanied by a remedial NIS which would include mitigation measures aimed at ensuring that the development would not have an adverse effect on the integrity of any European site having regard to the conservation objectives of the site.
- 6.4.16. The applicant makes the case that given that the spread lands closest to the SAC have not been used since the development was undertaken in 2016 the impacts on the environment to date have been limited. The applicant also contends that future impacts could be remediated by the preparation of a surface water management plan and the use of alternative spread lands. In my opinion these issues are all potential mitigations that could be incorporated into any remedial NIS submitted and could be considered by the Board in its appropriate assessment and the draft Stage 2 Appropriate Assessment report submitted and on file incorporates a number of such mitigations that lead to the conclusion of no adverse effect on the integrity of any European sites.
- 6.4.17. On the basis of the material available, including the information set out in An Bord Pleanála Ref. ABP-300315-17 and in the submissions of the applicant and planning authority in this case I conclude that it is possible to remedy any adverse effects on any European site.

***“Whether the applicant has complied with previous planning permissions or previously carried out an unauthorised development”***

- 6.4.18. A full list of all planning history relating to the subject site and the applicants other farm and dwelling are detailed at s.5.0 of the request submitted to the Board. The only enforcement action recorded on any of the applicant’s sites relates to the subject application for the retention of the agricultural shed and ancillary works (Ref. 19/200). It is stated that the applicant has no history of past failures to comply with planning permissions and also that the applicant also has a clean history with regard to the Department of Agriculture Guidelines and compliance with his Teagasc Nutrient Management Plan.

6.4.19. On the basis of the information presented, I conclude that the applicant has complied with previous planning permissions granted on his lands and that he is making appropriate efforts to regularise this development by applying to engage in the substitute consent procedure.

***“Such other matters as the Board consider relevant”***

6.4.20. I do not consider that there are any further matters which need be considered by the Board under this heading.

## **7.0 Recommendation**

Having regard to the above, I recommend that leave to apply for substitute consent should be granted based on the following reasons and considerations.

## **8.0 Reasons and Considerations**

Having regard to Section 177D of the Planning and Development Act, 2000, as amended, the Board is satisfied that an appropriate assessment is required in this case, in the light of the scale and nature of the development and its relationship with European sites.

Furthermore, the Board examined whether or not exceptional circumstances exist such that it would be appropriate to allow the opportunity for regularisation of the development by granting leave to make an application for substitute consent.

In this regard the Board;

- (i) considered that this application for leave to apply for substitute consent has demonstrated that the regularisation of the development would not circumvent the purposes and objectives of the Habitats Directive because it would allow for the provision of information and an analysis of the likely significant effects of the development on European sites in the vicinity of the development site.

- (ii) Considered that the applicant has demonstrated reasonable grounds to believe that the development was not unauthorised,
- (iii) considered that this application for leave to apply for substitute consent has demonstrated that the ability to carry out an appropriate assessment and that public participation in such an assessment have not been substantially impaired.
- (iv) considered the submission of an remedial Natura Impact Statement would facilitate an assessment of the potential for the remediation of any signification effects on European sites, and
- (v) considered that the applicant is making reasonable efforts to regularise the planning status of the development.

Having regard to the foregoing it is considered that exceptional circumstances do exist such that it would be appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent in relation to the site outlined in this application.

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**Stephen Kay**

Planning Inspector

13<sup>th</sup> October, 2021