



An  
Bord  
Pleanála

## Inspector's Report ABP-308205-20

<b>Development</b>	To construct a six bay slatted cattle shed with creep area and cattle handling area
<b>Location</b>	Coolreagh Beg , Bodyke , Co Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	20150
<b>Applicant(s)</b>	Paul Boland
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Sarah McNamara
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	29 <sup>th</sup> December 2020
<b>Inspector</b>	Mary Crowley

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	5
4.0 Planning History.....	6
5.0 Policy Context.....	7
5.1. National Planning Framework .....	7
5.2. Development Plan.....	7
5.3. Natural Heritage Designations .....	9
5.4. EIA Screening .....	9
6.0 The Appeal .....	9
6.1. Grounds of Appeal .....	9
6.2. Applicant Response .....	11
6.3. Planning Authority Response .....	11
6.4. Observations .....	12
6.5. Further Responses.....	12
7.0 Assessment.....	12
7.3. Principle .....	13
7.4. Residential Amenities.....	13
7.5. Water Pollution.....	14

7.6. Appropriate Assessment .....	15
7.7. Other Issues.....	19
8.0 Recommendation.....	20
9.0 Reasons and Considerations.....	20

## 1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.48ha is located towards the end of a narrow cul de sac c 2km northeast of the village of Bodyke. The site forms part of an established farmyard with an existing agricultural shed, associated yard and adjoining storage area. The access road serves the existing farmyard, associated uninhabited and dilapidated dwelling house and surrounding agricultural lands. The lane also serves another dwelling house further east. The site is c265m from the junction with the public road. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

## 2.0 Proposed Development

- 2.1. The applicant submitted on **4<sup>th</sup> March 2020** sought permission for a six bay cattle shed with creep area and cattle handling area. The floor area of the proposed works is 539sqm. The proposed underground tank has a stated area of 331.67m<sup>3</sup>.
- 2.2. It is stated that the applicant has an overall landholding of 40.87ha with 11.86ha in the vicinity of the site.
- 2.3. Further information was submitted on the **27<sup>th</sup> July 2020** comprising:
- A Habitats Directive Screening Report
  - Details of future uses for both the proposed and existing sheds
  - Details regarding waste management on the site
  - Responses to concerns in relation to the location of the shed within the landholding

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Clare County Council issued a notification of decision to grant permission subject to 8 no conditions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The Case Planner in their **first report** sought further information in relation to (1) Screening for AA (indirect effects on Lough Derg (Shannon), (2) proposals for management of surface water run-off, demonstration that the location of the feeding passage will not impact on access roadway and proposals for removal of all construction and demolition waste. **Further information** was requested on the **11<sup>th</sup> June 2020**.
- The Case Planner in their **second report** and having considered the further information recommended that permission be granted subject to 8 no conditions. The notification of decision to grant permission issued by Clare County Council reflects this recommendation.

#### 3.2.2. Other Technical Reports

- **Environment Section** – In line with the source-pathway-receptor model and the identification of potential impact pathways there is no potential for a direct hydrological link between the proposed location of the new slatted unit and any European Site. In terms of in-direct effects the topography would suggest that the land does drain to Lough O’Grady. In the absence of detailed information, it is not possible to conclude a finding of no significant effects in relation to the potential for in-direct effects on Lough Derg and potential negative effects on water quality in relation to Lough O’Grady as a pNHA. Recommended that at least Screening for AA is undertaken.

### 3.3. Prescribed Bodies

#### 3.3.1. None

### 3.4. Third Party Observations

- 3.4.1. There is one observation recorded on the appeal file from Sarah McNamara, Teeroneer, Tuamgraney, Co Clare. The appeal site is immediately adjacent to the observer’s family farm, upon which they constructed a dwelling house pursuant to Reg Ref P10/284. The issues raised may be summarised as follows:

- It has not been demonstrated that the proposed development will not have a significant adverse effect on the adjacent Lough O'Grady pNHA which is connected to the Lough Derg (Shannon) SPA via the Scariff River. An Appropriate Assessment is required
- The proposed development may infringe on objectives CDP8.32 Agricultural Waste and CDP14.4 Natural Heritage Areas
- The proposed development would have a negative impact on the observer's residential amenity by reason of towering over the access road, location of soakpit close to the observer's house, increase the amount of plastic wrapping blowing in the area, roadway may become part of applicants farmyard and the proposed development will be visible from their dwelling.

3.4.2. There are representations recorded on the file from Cllr Joe Conroy. No further comments is set out in the submission.

## 4.0 Planning History

4.1. There is no evidence of any previous appeal on this site. The following are noted on nearby sites to the east and in the appellants ownership:

- **Reg Ref 04/2623** – Clare County Council issued a decision of **incomplete application** against an application for outline permission by Michael McNamara for the construction of a new dwelling house on the site of the former main farm residence and to install an effluent treatment system and percolation area and carry out associated site
- **ABP 213165 (Reg Ref P05/44)** – Clare County Council **refused** outline permission to Michael McNamara for the construction of a new dwelling house and the installation of an effluent treatment system and percolation area and the carrying out of associated site works at the site of the former main farm residence as the scheme would be "*visually intrusive in the landscape*". An Bord Pleanála upheld the decision to **refuse** on appeal as "*the siting of the proposed development will be intrusive in this rural landscape, and will adversely impact upon its character, integrity and uniformity and would conflict with Policy CDP46 of the Clare County Development Plan*".

- **Reg Ref P10/284** – Planning permission **granted** to Michael McNamara for the development of a new two storey detached dwelling (14sqm existing plus 86sqm proposed), small utility building, wastewater treatment plant with percolation area, entrance gates, driveway, stone retaining wall, external works and associated landscaping subject to 15 no conditions. Stated in the application form that this house will be the applicants permanent place of residence.
- **Reg Ref P14/703** – Permission **granted** to Michael McNamara to extend the appropriate period of planning permission of Reg Ref P10/284 for a new two storey detached dwelling, wastewater treatment plant and associated landscaping.

## 5.0 Policy Context

### 5.1. National Planning Framework

- 5.1.1. National Policy Objective 23 - Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.
- 5.1.2. The **European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017** provides the relevant standards for the collection and disposal of farm yard manure to give effect to Ireland's Nitrates Action Programme for the protection of waters against pollution caused by agricultural sources.

### 5.2. Development Plan

- 5.2.1. The operative plan for this area is the **Clare County Development Plan 2017 – 2023**. The site is located in a “**Settled Landscape**” as designated in the Development Plan (Map 13A Landscape Designations). The following objectives are relevant:
  - **Objective CDP8.32 - Agricultural Waste.** *It is an objective of the Development Plan to ensure that the disposal of agricultural waste is carried out in a safe, efficient and sustainable manner having regard to the environment and health and safety of individuals, and in compliance with the European Communities (Good*

*Agricultural Practice for Protection of Waters) Regulations, 2009 (as amended), S.I. No.101 of 2009, the Litter Pollution Act 1997 and the European Communities (Water Policy) Regulations 2014 (SI No. 350 of 2014).*

- **Objective CDP13.2 – Settled Landscapes.** *It is an objective of the Development Plan to permit development in areas designated as ‘settled landscapes’ that sustain and enhance quality of life and residential amenity and promote economic activity subject to:*

- *Conformity with all other relevant provisions of the Plan and the availability and protection of resources;*
- *Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;*
- *Regard being given to avoiding intrusions on scenic routes and on ridges or shorelines.*

*Developments in these areas will be required to demonstrate:*

- *That the site has been selected to avoid visually prominent locations;*
- *That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads;*
- *That design for buildings and structures reduce visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.*

- **Objective CDP14.4 - Natural Heritage Areas (NHAs) and proposed Natural Heritage Areas (pNHAs).** *It is an objective of the Development Plan:*

- 1) *To actively promote the conservation and protection of areas designated as an NHA (including proposed sites) and to only consider proposals for development within or affecting an NHA where it can be clearly demonstrated that the proposed development will not have a significant adverse effect on the NHA or pNHA;*
- 2) *To identify and afford appropriate protection to any new, proposed or modified NHAs identified during the lifetime of this Plan.*



### **5.3. Natural Heritage Designations**

5.3.1. The site is not located within a designated Natura 2000 site. It is noted that the following site are proximate to the appeal site:

- Slieve Aughtys SPA (Site Code 004168)
- Lough Derg (Shannon) SPA (Site Code 004058)
- Slieve Bernagh Bog SAC (Site Code 002312)
- Glandree Bog SAC (Site Code 001912)
- Loughatorick South Bog SAC (Site Code 000308)
- Pollagoona Bog SAC (Site Code 002126)
- Danes Hole, Poulnalecka SAC (Site Code 000030)
- Lower River Shannon SAC (Site Code 002165)
- Glenoura Wood SAC (Site Code 001031)

### **5.4. EIA Screening**

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

## **6.0 The Appeal**

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

6.1.1. The third-party appeal was prepared and submitted by Sarah McNamara, Teeroneer, Tuamgraney, Co Clare and may be summarised as follows:

- The Screening for AA carried out by the Planning Authority was entirely inadequate and not in accordance with the requirements of the Habitats Directive and the related case-law of the Court of Justice of the European Union.
- The construction of a six bay slatted unit will self evidently result in an intensification of the farming activity being carried out on the shores of Lough O'Grady, a pNHA which is hydrologically linked to the Lough Derg SPA/ SCA.

- The proposed development is situated immediately adjacent to the road, which runs along its northern boundary resulting in an inevitable risk of runoff of slurry, silage and effluent running onto the roadway and from there into the drains and watercourses which lead to the nearby River Graney and Lough O'Grady all of which are contained within the Lough O'Grady pNHA.
- The granting of the permission subject to conditions is in fact confirmation that there are potential significant effects arising from the proposed development such that an AA should have been required.
- In imposing conditions, the Planning Authority appears to have taken mitigation into account in its consideration of the Screening for AA and in that regard applied the incorrect test. Screening should be undertaken without the inclusion of mitigation.
- The Screening was not carried out by a competent expert with the relevant expertise in the field of the Habitats Directive.
- The Screening fails to consider the potential effects on Lough O'Grady at all and therefore fails to consider the potential in-direct effects on Lough Derg SPA / SAC.
- The Planning Authority failed to consider the potential eutrophication of Lough O'Grady which the proposed development would entail.
- The Screening and the Planning Authority's decision also failed to consider CDP14.4 Development Plan Objective: Natural Heritage Areas (NHAs) and proposed Natural Heritage Areas (pNHA's).
- The Planning Authority's decision to grant in the absence of proper waste management proposals being submitted is also contrary to the objectives of the Development Plan. Objective CPP8.32 Agricultural Waste refers.
- The area labelled soak-pit in the plan submitted was at a higher level than the area from which the runoff is to flow.
- The existing shed on which the applicant relies for the purposes of his siting argument, was erected without the benefit of planning permission and is not an exempted development.
- The issue of waste management, the siting of the development and the potential run-off onto the roadway also impact on the amenity of the appellants dwelling.

- Reference is made to the following legal cases:
  - 1) Case C-461-17 Brian Holohan, Richard Guilfoyle, Noric Guilfoyle, Liam Donegal vs An Bord Pleanála
  - 2) Case C-127/02 Waddenzee
  - 3) Case C-323/17 People Over Wind
  - 4) Case C-293/17 Dutch Nitrates Cases

## **6.2. Applicant Response**

6.2.1. The first party response to the appeal has been prepared and submitted by the applicant Paul Boland and Damien Coyne, Agricultural Consultant (responsible for the preparation of an AA Stage 1 Screening Report) and may be summarised as follows:

- The author has a Bachelor Degree in Environmental Science (NUIG 2000). Core elements of this degree programme were environmental management, botany, hydrology, the authors final year these was on the impacts of different land use practises on flora and invertebrate fauna providing the author with the necessary skills to undertake a variety of ecological projects.
- The report requested by the client and Clare County Council was a Stage 1 Screening Report for AA. Many of the points noted as deficiencies are points that would be dealt with in a Stage II Natural Impact Statement Report. This report was not requested by the Local Authority.
- The objection repeatedly refers to a deficiency relating to a failure to include Lough O'Grady pNHA in the screening report. AA deals with impacts on the qualifying interests of European Sites i.e. sites within the Natura 2000 network. Lough O'Grady is a pNHA which does not fall within the Natura 2000 network, and consequently is not dealt with in the report.

6.2.2. A letter from the applicant, Paul Boland, states that the appellant's house is not their permanent home but is rented and that they live in Scariff when they come down from Dublin.

## **6.3. Planning Authority Response**

6.3.1. Clare County Council in their response set out the following:

- The issues raised in the appeal have been dealt with in the planning report
- Having regard to the (a) rural nature of the site, (b) the location within an existing agricultural yard; (c) the intended use of the proposed building; (d) the relevant Section 28 Ministerial Guidelines and the policies of the County Development Plan, the Planning Authority was satisfied that the proposed development was in accordance with the proper planning and sustainable development of the area.
- The Board is requested to uphold the decision to grant permission.

#### **6.4. Observations**

6.4.1. None

#### **6.5. Further Responses**

6.5.1. None

### **7.0 Assessment**

7.1. This assessment is based on the plans and particulars submitted to the Planning Authority on the 4<sup>th</sup> March 2020 as amended by further plans and particulars submitted by way of further information the 27<sup>th</sup> July 2020.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Residential Amenities
- Water Pollution
- Appropriate Assessment
- Other Issues

### **7.3. Principle**

- 7.3.1. I note the concerns raised by the appellant with regard to the siting of this scheme at this location in the first instance.
- 7.3.2. As documented permission is sought for the for a six bay cattle shed with creep area and cattle handling area within an existing established farmyard. The floor area of the proposed slatted shed is 539sqm. The proposed underground tank has a stated area of 331.67m<sup>3</sup>. The farmyard is situated on the applicant's largest land holding. It is stated that they do not have any other farmyard and would not therefore be suitable for them to locate the proposed shed elsewhere.
- 7.3.3. Taking into consideration the established nature of farmyard activity on this appeal site albeit small in scale and the predominance of agriculture in the area, that the continuance, improvement and expansion of the activity is a realistic expectation in the normal course of events. I consider the further development of agricultural buildings in what appears to be a modernisation of an existing use in order to comply with prevailing farming practises to be an acceptable use in principle. Furthermore, I am satisfied that the scale, siting and design of the unit is appropriate to its context and that it will not adversely dominate the rural landscape at this location or injure the visual amenity of the area.

### **7.4. Residential Amenities**

- 7.4.1. I note the concerns raised with regard to the impact of the scheme on the appellants residential amenities relative to their house.
- 7.4.2. The appellants dwelling is approximately 125m to the east of the proposed scheme and separated by tall trees / hedging and an agricultural field. Given the scale of the scheme, which is not of itself considered to be particularly excessive, I do not consider that its location within an within an established farmyard in this rural context to be so obtrusive as to be detrimental to the amenities of the adjoining neighbours particularly having regard to the reasonable distance between the scheme and said property.
- 7.4.3. Overall, I am satisfied that subject to a condition requiring that the eastern boundary of the appeal site be supplemented with further mature landscaping that to permit this

proposed development would not detract from the amenities of the adjoining dwelling house.

## **7.5. Water Pollution**

- 7.5.1. The appellant raises significant concerns in relation to the issue of waste management and surface water disposal with particular reference to the construction and demolition waste, unmanaged plastic waste, collection of silage effluent, location of the soakpit and run off onto the adjoining roadway.
- 7.5.2. The European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017, as amended, sets out a general obligation (article 8) to ensure that the capacity of storage facilities for livestock manure and other organic fertilisers, soiled water and effluents from dung sheds, farmyard manure pits, silage pits or silage clamps on a holding shall be adequate to provide for the storage of all such substances as are likely to require storage on the holding for such period as are required in the regulations in order to avoid pollution.
- 7.5.3. No silage pit is proposed as part of this scheme and no silage pit was evidenced on day of site inspection. It was however observed that both soiled water and surface water discharge out the entrance gate of the site and across the road into the field where they flow downhill towards the River Graney. I refer to my site inspection photo no 3 taken on the 29<sup>th</sup> December 2020 together with the Clare County Council Case Planners photo from the same location looking north towards the River Graney and Lough O'Grady taken on the 23<sup>rd</sup> March 2020. The issue of flooding in the River Graney is self-evident. While there is no flooding at the appeal site the requirement for strict adherence to appropriate waste management and surface water management requirements is imperative particularly in light of the current situation where unmanaged waste and surface water discharges from the site are flowing downhill towards the River Graney and associated flooded lands. The issue of potential water pollution cannot be set aside. The existing situation is unacceptable, and the opportunity now presented to rectify this situation is acknowledged.
- 7.5.4. It is stated that the existing farm shed will be used for fodder / machinery stores and that all soiled water will be contained in the proposed slatted tank with no soiled water produced outside the proposed shed. Therefore, once the slatted shed is completed

all soiled water will be contained and the only surface water will be storm water. It is proposed that this storm water will be collected by eave gutters and directed to the proposed soak pit on site. A revised site plan was submitted by way of further information relocating the soakpit between the existing shed and the proposed shed.

7.5.5. Notwithstanding these stated proposals, no further details or overall waste management and surface water management plan for this established farmyard such as, and not restricted to how surface water from the central area of the site, between the existing and proposed shed and from the area to the north of the proposed shed will be collected and disposed of within the site boundary and prevented from discharging onto the access lane have been provided with the appeal. Furthermore no construction details have been provided particularly with regard to the management of topsoil and fill on site.

7.5.6. I note the Local Authority's approach to deal with this matter by way of condition whereby Condition No 2 of the notification of decision to grant permission sought the submission of revised surface water management proposals and detailed proposals for the storage / removal of topsoil and fill which is not required for the backfilling purposes. However, I am not satisfied given the particular circumstances on site that the matter can be dealt with by way of condition. These are not points of detail but are rather a requirement for an overall strategy for the site in order to prevent water pollution.

7.5.7. The Board will be aware that it is precluded by article of 5 the European Communities Environmental Objectives (Surface Water Regulations) 2009 from undertaking its functions in manner that knowingly causes or allows a deterioration in the chemical or ecological status of a body of surface water. To this end and having regard to the foregoing I conclude that the Board cannot be satisfied that the proposed development would not give rise to a risk of ground or surface water pollution. Refusal is recommended.

## **7.6. Appropriate Assessment**

7.6.1. The appellant has raised detailed concerns with regard to the inadequacies of the Screening Report and subsequent assessment by the Planning Authority all of which have been noted.

7.6.2. The application area does not extend into any European site and there are no proposals for works to any European Site. It is noted that there a number of Natura Sites proximate to the appeal site. I refer to the report of the Clare County Council Environment Section and the Stage 1 Appropriate Assessment Screening Report submitted by way of further information.

**7.6.3. Stage 1 Screening for Appropriate Assessment**

7.6.4. The application included a Stage 1 Appropriate Assessment Screening Report to evaluate the potential impacts(s) of the proposed development on 6 no European Sites located within 15km radius. While 15km is not a statutory requirement I am satisfied that it is a reasonable parameter and that the sites identified in report are acceptable. All 6 no sites were screened out from further consideration. The report concluded *that should this development be granted planning permission there will be no impacts upon the integrity or the conservation objectives of any Natura 2000 site and that the habitat and species associated with these sites will not be adversely affected and therefore this proposed development does not need to proceed to Stage II.*

7.6.5. As stated, the appeal site is not located within a designated Natura 2000 site. Sites considered relevant to this appeal site are set out below:

Code	Site Name	Distance	Screening Conclusion
004168	Slieve Aughtys SPA	2.8km North	Screened out. No hydrological impact and distance sufficient for no impacts due to works
<b>004058</b>	<b>Lough Derg (Shannon) SPA</b>	<b>5km East</b>	<b>Screened in due to potential hydrological connection by reason of surface water flow and the source-pathway-receptor model</b>
002312	Slieve Bernagh Bog SAC	3km South	Screened out. No hydrological impact and



			distance sufficient for no impacts due to works
001912	Glandree Bog SAC	10km North West	Screened out. No hydrological impact and distance sufficient for no impacts due to works
000308	Loughatorick South Bog SAC	10.5km North West	Screened out. No hydrological impact and distance sufficient for no impacts due to works
002126	Pollagoona Bog SAC	12.9km North	Screened out. No hydrological impact and distance sufficient for no impacts due to works
000030	Danes Hole, Poulnalecka SAC	13km North East	Screened out. No hydrological impact and distance sufficient for no impacts due to works

7.6.6. As documented above, with the exception of Lough Derg (Shannon) SPA there are no hydrological connections with the other 6 no Natura 2000 sites listed above and are therefore screened out from further consideration.

7.6.7. In line with the source-pathway-receptor model and the identification of potential impact pathways there is no potential for a direct hydrological link between the proposed location of the new slatted unit and any European Site. In terms of in-direct effects through any hydrological link between the proposed location of the site and any European Site there is greater than 6.7km between the location of the proposed slatted unit and the Lough Derg (Shannon) SPA. While there doesn't appear to be any direct land drains leading from the site to the nearest stream the topography of the area, as evidenced on day of site inspection (site photos refer) would indicate that the land drains in a northerly direction to the River Graney and to Lough O'Grady. Lough O'Grady is classified as an Acid Oligotrophic Lake and is a proposed Natural Heritage Area. The River Graney flows into Lough O'Grady at the west end, while the Scariff

River flows out at the eastern side and into the Lough Derg (Shannon) SPA further east.

7.6.8. The Lough Derg (Shannon) SPA lies within counties Tipperary, Galway and Clare and is the largest of the River Shannon Lakes, being some 40 km long. The conservation objective for the site is *to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:*

- Cormorant (*Phalacrocorax carbo*)
- Tufted Duck (*Aythya fuligula*)
- Goldeneye (*Bucephala clangula*)
- Common Tern (*Sterna hirundo*)

7.6.9. To acknowledge the importance of Ireland's wetlands to wintering waterbirds, "Wetland and Waterbirds" may be included as a Special Conservation Interest for some SPAs that have been designated for wintering waterbirds and that contain a wetland site of significant importance to one or more of the species of Special Conservation Interest. Thus, a second objective is included for this site *to maintain or restore the favourable conservation condition of the wetland habitat at Lough Derg (Shannon) SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.*

7.6.10. The potential for impact on the features of interest and conservation objectives of the Lough Derg (Shannon) SPA are considered below:

- There will be no direct habitat loss within the Lough Derg (Shannon) SPA. Impacts arising from habitat loss / alteration are screened out.
- Habitat fragmentation of qualifying habitats will not arise and is screened out.
- It is not expected that the proposed works will cause any reduction in the baseline population of any qualifying species and is therefore screened out.
- There is potential risk to water quality during the construction and operational phase of the proposed works as soiled water, effluents, silt and harmful substances including the operation of land spreading of slurry to become entrained in surface water run-off and enter the drainage channels to Lough Derg via surface water run-off, via the River Graney and Lough O'Grady. Deteriorating water quality resulting

from contamination events could have negative impacts on the qualifying interests and is therefore screened in.

- 7.6.11. I agree with the report of Clare County Council Environment Section Report that in the absence of detailed information relating to spread lands, site drainage and the assimilative capacity of Lough O'Grady and the Scariff River to accommodate any potential pollution incidence it is not possible to conclude a finding of no significant effects in relation to the potential for in-direct effects on Lough Derg and potential negative effects on water quality in relation to Lough O'Grady as a pNHA.
- 7.6.12. In summary the Lough Derg (Shannon) SPA, could potentially be impacted by a number of factors during construction and operation of the proposed works including land spreading of slurry by reason of the in-direct effects through its hydrological link with appeal site. Further consideration is required in the context of the conservation objectives for the Lough Derg SPA paying particular attention to the Qualifying Interest Feature of "Wetlands and Waterbirds". A Natura Impact Statement is therefore required in order to assess the potential impacts. It is not possible to use mitigation measures to screen out the requirement for AA. Refusal is therefore recommended.

## 7.7. Other Issues

- 7.7.1. **Development Contributions** - I refer to the Clare County Council Development Contribution Scheme 2017-2023. Section B – Non-Residential Development Charges states that for Agricultural Buildings development charges are only applicable to developments of structures which are greater than 800m<sup>2</sup> and that *where an extension to an existing structure is proposed which brings the area of the structure over 800m<sup>2</sup>, the rate will be applicable to each sqm in excess of 800m<sup>2</sup>.* Feed aprons and underground tanks are exempt from development contribution levies. The stated area of the existing agricultural building on site is 220m<sup>2</sup>. The proposed development less the feeding passage / apron is c461m<sup>2</sup>. The accumulative floor area is c681m<sup>2</sup>. The proposed development is not therefore subject to a development charge.
- 7.7.2. **Unauthorised Development** – I note the concerns raised by the appellant that the existing shed on site was erected without the benefit of planning permission and is not exempted development. This is not a matter for An Bord Pleanála. The Planning Acts provide for a planning enforcement mechanism whereby any development works

which require permission and does not have that permission is unauthorised development. The planning system is operated on the ground by local planning authorities who are responsible for operating Ireland's planning enforcement regime. Accordingly, it is my view that such concerns should be dealt with at local authority level. These comments are without prejudice regarding the planning status of the existing shed on site.

## 8.0 Recommendation

- 8.1.1. I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be **REFUSED** for the following reason and considerations.

## 9.0 Reasons and Considerations

- 1) On the basis of the information provided with the application and the appeal including the Stage 1 Screening Report for Appropriate Assessment and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually or in combination with other plans or projects would not result in adverse effects on the integrity of the Lough Derg (Shannon) Special Protection Area (Site Code 004058) in view of the sites Conservation Objectives by reason of a hydrological connection between the appeal site and the Natura 2000 site that may result in indirect effects due to construction and development related emissions including land spreading of slurry and therefore the Board is precluded from granting permission.
- 2) The documentation submitted with the planning application and appeal has not demonstrated adequate proposals for the management of surface water at the proposed development or within the overall farmyard complex, or detailed construction proposals to include for the storage and removal of topsoil and fill onsite, or that sufficient storage capacity is proposed for the effluent likely to arise from the proposed development, in a manner which complies with the EU (Good Agricultural Practice for the Protection of Waters) Regulations 2017, as amended. In the absence of such information and having regard to Article 5 of the European

Communities Environmental Objectives (Surface Waters) Regulations, 2009, as amended, which requires that a public authority, in the performance of its functions, shall not undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water, it is considered that the proposed development would pose an unacceptable risk of environmental pollution and would, therefore, be contrary to the proper planning and sustainable development of the area.

---

**Mary Crowley**

**Senior Planning Inspector**

**1<sup>st</sup> February 2021**