



An  
Bord  
Pleanála

## Inspector's Report ABP308816-20

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<b>Development</b>	Construct cattle crush, handling area and concrete apron, including ancillary site works.
<b>Location</b>	Lecarrowanteean, Killala, Ballina, County Mayo.
<b>Planning Authority</b>	Mayo County Council.
<b>Planning Authority Reg. Ref.</b>	20387.
<b>Applicant</b>	Tommy Moyles.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party.
<b>Appellant</b>	Tommy Moyles.
<b>Observers</b>	(i) An Taisce, (ii) John Burke.
<b>Date of Site Inspection</b>	8 <sup>th</sup> March, 2021.
<b>Inspector</b>	Paul Caprani.

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## 1.0 Introduction

ABP308816-20 relates to a first appeal against the decision of Mayo County Council to issue notification to refuse planning permission for the construction of a cattle crush, handling area together with a concrete apron on the banks of Cloonaghmore River at Lecarrowanteean, Killala in North Mayo. Mayo County Council issued notification to refuse permission for three reasons. The first reason stated that the proposed cattle crush and associated effluent could give rise to a risk of water pollution affecting the quality of the river. The second reason for refusal states that the proposed development is located in close proximity to the junction of two heavily trafficked local roads and any intensification of use at this location would endanger public safety by reason of a traffic hazard. The final reason for refusal stated that the proposed cattle crush would exacerbate the risk of flooding in the area.

## 2.0 Site Location and Description

- 2.1. The proposed application is located in a rural area approximately 5 kilometres south-west of the village of Killala in North Mayo. The site is located in the townland of Lecarrowanteean. The lands on which the proposed cattle crush is to be located are situated to the immediate west of a local road which runs in a north-south direction and ends in a T-junction to the immediate north of the site. The Palmerstown (Cloonaghmore) River is located to the immediate west of the site, the eastern banks of which are located c.20 metres from the subject site. The lands on which the proposed cattle crush is to be located are currently under grass and incorporate a gentle slope westward towards the banks of the river. A dense hedgerow runs along the roadside (eastern) boundary of the site. Low density riparian woodland is located along the banks of the river. However, the woodland is largely absent in the vicinity of the appeal site on the eastern bank of the river. The river channel has a width of approximately 15 metres in the vicinity of the site. There is no development on the parcel of land situated between the access road and the river in the vicinity of the site. There is one agricultural holding directly opposite the site to the east. A small public house and surface car parking area is located at the T junction to the north-

east of the subject site. There is no other development in the vicinity of the appeal site.

- 2.2. The site is rectangular in shape and is approximately 17 metres in width and just over 38 metres in length. It has a total area of 730 square metres.

### 3.0 Proposed Development

- 3.1. Planning permission is sought for the construction of a new concrete apron c.18.2 metres in length and 6 metres in width covering a gross floor area of 73 square metres. Within this concrete apron it is proposed to construct a cattle crush and two handling areas all of which are located within a 1.7 metre high reinforced concrete wall. The development is to be located c.10 metres from the public road and c.22 metres from the Palmerstown River.

### 4.0 Planning Authority's Decision

#### 4.1. Decision

- 4.1.1. Mayo County Council issued notification to refuse planning permission for three reasons which are set out in full below.

1. *Having regard to the proposed development location which is adjacent to the Palmerstown River the applicant has not demonstrated to the satisfaction of Mayo County Council that the proposed cattle crush and associated effluent would not give rise to a risk of water pollution affecting the quality of the river waters by way of increased nutrient loading. Therefore, the proposed development could cause serious water pollution and if permitted, would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.*
2. *The proposed development is located in close proximity to the junction of heavily trafficked local roads and any intensification of use if permitted at this location, would endanger public safety by reason of a traffic hazard or obstruction to road users because it would give rise to traffic movements which would interfere with the safety and free flow of traffic.*

3. *Having regard to the location of the site in an area which has been identified by the Office of Public Works as land where there is a reoccurrence of flooding, Mayo County Council considers that the proposed cattle crush would exacerbate the risk of flooding in the area and other areas. It is therefore considered that the proposed development would be prejudicial to public health and therefore contrary to the proper planning and sustainable development of the area.*

4.1.2. A number of letters of objection from third parties were submitted in respect of the application. The contents of these letters have been read and noted.

4.1.3. The initial planner's report requested further information in respect of the following:

- A flood risk assessment which shall demonstrate that the development is not at risk of flooding and that the development will not increase the flood risk of adjoining areas.
- A revised layout plan detailing the distance from the edge of the road junction to the vehicular access for the proposed development.
- Confirmation of the proposed front boundary to the development.
- Confirmation of the proposed ground levels for the cattle crush.
- Clarification of the location of the applicant's existing farmyard complex.
- A nutrient management plan complying with the requirements of the Good Agricultural Practice for the Protection of Water Regulations. The additional information request also sets out specific requirements to be set out in the nutrient management plan.
- Finally, the applicant is requested to confirm whether or not there is another location within his landholding to accommodate this development.

#### 4.2. **Additional Information Response**

4.2.1. A letter on behalf of the applicant from Teagasc states that the applicant has no housing facilities on the farm for the housing over the winter of animals and as such the farm generates no slurry or farmyard manure to be spread. The applicant will graze cattle on his holding for the summer months when the cattle crush is complete.

4.2.2. The subject site is currently rented out to another farmer until the end of 2020. When the lease expires the applicant will use the farm for the grazing of cattle. The construction of the crush and holding pen is to facilitate the safe loading and unloading of cattle on these lands. As such, Items 1 to 6 associated with any nutrient management plan as set out in the request for further information are not applicable as the farm has no housing to generate slurry or farmyard manures. To minimise the generation of soiled water from the holding pen, cattle will be held in the pen for a minimum period necessary to load and unload cattle or for the routine treatment/testing of animals. The holding pen will be swept clean after use and all materials generated will be spread on land only on fields greater than 10 metres away from field drains. Animals will not have access to the holding pen unless it is being used for the activities described and there will be no supplementary feeding taking place.

4.2.3. A separate flood risk assessment was undertaken. It is stated based on the calculations, historic maps, local knowledge and the elevated topography of the site, it is inferred that the finished floor level is unlikely to be at risk of flooding up to and including the 0.1% AEP. Furthermore, the proposed development would not interfere with or reduce the storage capacity by removing any area of the existing floodplain. The roads and the junction would need to flood to a depth of more than 1.7 metres prior to the development becoming inundated. It is stated that the finished floor level of the proposed development shall be at, or above the 102 metre contour as indicated in the site layout map. Soil and waste from the development shall not be relocated or deposited in the north or west of the site boundary but may be spread in areas that are above the 102 metre contour.

4.2.4. The planner's report states that the local engineer examined the response and has major concerns regarding the proposed access in relation to visibility and traffic safety. It is therefore recommended that planning permission be refused. Reference is made to the Ballina Municipal District Engineer's Report (which does not appear to be contained on file). It states that the engineer has reservations in relation to the following:

- Its location along the road edge so close to a busy road junction.
- Access for vehicles entering and egressing the site safely.

- Concerns in relation to adequate visibility with no access/exit details provided.
- No details on the site layout plan how cattle will access the crush via the field behind the proposed crush location.
- Lack of details on surface water collection.
- Potential contamination of surface water onsite with animal waste and discharge of same onto adjacent public road.

4.2.5. On this basis Mayo County Council issued notification to refuse planning permission for the three reasons set out above.

## 5.0 Planning History

5.1. No history files are attached.

5.2. Reference is made to two relevant planning applications in the planner's report.

- Under P11743 planning permission was refused to the applicant for retention of the existing agricultural holding pen including all other ancillary site works and services.
- Under Reg. Ref. 13/48 – **PL16.242279**<sup>1</sup> planning permission the same applicant was refused for the removal of the existing cattle crush steel pillars and permission to retain the foundations and walls of the existing cattle crush. Together with permission to construct a storage shed for agricultural purposes on the existing cattle crush foundations and walls including all other ancillary site works and services. P13/48 was the subject of a first party appeal (PL16.242279) where planning permission was refused by the Board on the basis that the proposal lies within an area with a high probability of flooding.
- It is also stated that there is an enforcement file under Reg. Ref. PE131/14.

## 6.0 Grounds of Appeal

6.1. The decision was the subject of a first party appeal. The grounds of appeal are outlined below.

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<sup>1</sup> This file was not attached to the current appeal file.



In relation to the first reason for refusal, the Board are requested to note the following:

- The application is for an open pen not a housing facility, it will be used for limited times for the loading and unloading of animals and for treating animals therefore any run-off would be minimal and would be restricted to the time of usage only.
- It is noted that no submissions were received on behalf of Fisheries Ireland or any other body with whom concerns would be raised with regard to watercourses.
- With regard to the second reason for refusal, the proposed pen is designed to make farming activities at this location safer. Currently the loading and unloading of animals at this location means that, when the trailer is backed into the gateway, the junction is blocked along one lane and this is very dangerous. The proposed pen is to be located within the field so that the trailer can be backed into the field off the roadway completely and all loading and unloading can take place within the field. Furthermore, should a vet be required to visit, all activities can take place within the field.
- With regard to the issue of flooding the applicant had a flood risk report carried out for the proposed facility which concluded that the proposed finished floor level of the pen is unlikely to result in flooding.
- Finally, it is stated that the location of the field between the roadway and the river results in the grazing of animals being difficult to manage, and this results in the requirement for handling facilities at this location.

## 7.0 Observations

7.1. Two observations were submitted which are summarised below.

### 7.2. Observation from An Taisce

- The observation from An Taisce expresses concerns that the proposed development could have an adverse impact on the Cloonaghmore River which flows less than 20 metres from the site. The Cloonaghmore River is

currently classed as being of good water quality as per the requirements of the EU Water Framework Directive. Any water quality deterioration resulting from the proposal would be untenable. It is considered that the application and appeal documentation has failed to demonstrate that surface water and effluent run-off would be safely controlled. Reference is made to the EPA Report on Water Quality (2019) which notes particular concern in relation to increased nutrient loadings on rivers. These declines are attributable in large part to ongoing agricultural intensification.

- An Taisce also concurs with Mayo County Council assessment regarding the creation of a traffic hazard and the potential exacerbation of flood risk.

### **7.3. Observation from John Burke**

- This observation sets out the background to the proposed development and makes reference to previous applications which were refused planning permission. It is noted that the most recent refusal (Planning Authority Ref. P13/48) was the subject of a first party appeal (PL16.242279) where planning permission was refused by the Board on the basis that the proposal lies within an area with a high probability of flooding.
- The main concerns associated with the proposed development are set out below.
- It is stated that historically the subject field accommodated a quarry which was filled in by the appellant. It is suggested that effluent will flow more readily to the soils and subsoils due to them being extensively disturbed and this significantly increases the risk of pollution.
- The observer has a long established water extraction point supplying his farm which is located on the river bank and is within 25 metres of the proposed structure. This abstraction point has been the subject of a recent High Court order which guaranteed access from this source. Any contamination of water at this location could be detrimental to farming operations. The proposed structure could also interfere or damage a water supply type which serves the observers farm. Any potential run-off could have devastating consequences given the sensitivity and vulnerability of the river. Mayo County Council must

ensure the protection, improvement and sustainable use of all waters in the county. Reference is made to Policy P/EH-WQ1 in the County Development Plan and it is stated that the proposal contravenes this policy.

- It is stated that the purpose of the loading pen is to hold animals not just for loading but for testing, dosing, tagging and weaning etc. No details have been provided with regard to potential impacts on water pollution arising from these specific activities. No details are provided as to how it is proposed to cater for any waste arising in accordance with the provisions of the Nitrates Directive. The appellant has not provided any details of proposals to deal with surface water run-off. No details have been provided with regard to access to the road to facilitate lorries entering and exiting for the purposes of load and unloading.
- The proposed site is liable to flooding. The consequences of the lands in question being inundated with floodwaters would also exacerbate pollution activities which would arise from run-off or accidental spillages so close to the river.
- The proposed development would be located c.60 metres from the observers home and business. This is less than the 100 metres required in the guidelines. The proposed cattle crush may be used to hold animals for long periods thus causing noise pollution which would impact on the amenities of the area.
- This section of the road is heavily trafficked and the proposal would create a serious public safety issue by reason of a traffic hazard. The proposal is in proximity to two local roads which will exacerbate the potential for a traffic hazard.
- The observer goes on to address the various points raised in the grounds of appeal.
- It is reiterated that the observer is greatly concerned with the potential for run-off from the proposed development on a major salmonid river. Concerns in relation to how it is proposed to attenuate and mitigate against any run-off of waste are reiterated.

- Concerns in relation to the loading and unloading of animals at a dangerous junction is also reiterated.
- It is reiterated that the proposed site is adjacent to an area which has previously been the subject of a major flood event and this has been identified on the National Flood Hazard Maps. The flood risk report submitted merely concludes that the site “is unlikely to be at risk of flooding”.

## **8.0 Planning Policy**

### **8.1. Mayo County Development Plan**

- 8.1.1. The site is governed by the policies and provisions contained in the Mayo County Development Plan 2014 – 2020. The update of this Plan is presently in draft form and has not been formally adopted. The subject site is located on lands not governed by any zoning objectives. Relevant policies relating to the proposed development include:

AG-01 – It is an objective of the Council to support the sustainable development of agriculture with emphasis on local food supply and agriculture diversification where it can be demonstrated that the development will not have significant adverse effects on the environment, including the integrity of the Natura 2000 network, residential amenity or visual amenity.

In relation to water quality, Policy WQ-01 states that it is an objective of the Council to implement the Western River Basin Management Plan to ensure the protection, restoration and sustainable use of all waters in the county, including rivers, lakes, groundwater, coastal and transitional waters and to restrict development likely to lead to a deterioration in water quality or quantity.

## **9.0 Environmental Designations**

The nearest special protection area is the Killala Bay/Moy Estuary SPA (Site Code: 004036). At its closest point the subject site is located approximately 3.5 kilometres from the subject site (as the crow flies). The Palmerstown River flows into the Killala Bay/Moy Estuary SPA. The hydrological route along the river incorporates a distance of approximately 4.4 kilometre between the subject site and the SPA.

## 10.0 EIAR Screening Determination

Having regard to the modest nature of the proposed development and the nature of the receiving environment it is considered that the proposed development is unlikely to have significant adverse impacts on the environment and therefore EIAR can be screened out.

## 11.0 Planning Assessment

I have read the entire contents of the file, visited the subject site and have had particular regard to the Planning Authority's reasons for refusal and the grounds of appeal rebutting these reasons. I have also had regard to the information contained in both of the observations submitted and I consider the following issues to be critical in determining the current application and appeal.

- Potential Impact on Water Quality of the Palmerstown River
- Road Safety Issues
- Flooding Issues
- Other Issues

### 11.1. Potential on Water Quality of the Palmerstown River

11.1.1. The Palmerstown River runs in proximity to the proposed cattle crush facility. As the proposed cattle crush facility is located at a higher elevation than the river channel, there is in my view a significant and potential threat that any effluent associated with the cattle crush facility and the associated concrete apron could adversely impact on the water quality of the river. The An Taisce submission indicates that the river currently is classed as being of good water quality status in accordance with the requirements of the EU Water Framework Directive. I have verified that this is the case with the Palmerstown river being awarded a Q-Status of 4 at a bridge c. 300m downstream of the site. The Board will be aware that many of the water bodies within the State classed as either being good status or high status are coming under threat from various activities including agriculture. The location of a large cattle crush facility in such close proximity to the river where there is a limited buffer zone of over

20 metres is in my view problematic in terms of its threat for water pollution. The pen and holding facility together with the concrete apron are over 100 square metres in size and therefore it has the ability to accommodate significant numbers of cattle. Details of the number of cattle to be housed within the pen and for what periods of time are not indicated in the planning application. If significant numbers of cattle were to be housed within the facility for significant time it would in my view present a significant threat to water quality in the area.

- 11.1.2. While it cannot be verified, one of the observations submitted indicated that the lands in question were formally used as a quarry and if this were the case, it is possible that any percolation of soiled water into the soil and subsoil could present an additional threat to the water quality within the river. On this basis I would concur with the Planning Authority that the proposed cattle crush facility at this location does present a threat to the water quality of the Palmerstown River.
- 11.1.3. While the grounds of appeal suggest that there were no expressions of concern submitted on behalf of environmental bodies such as Inland Fisheries Ireland the Board will note that an observation was submitted by An Taisce supporting the decision of the Planning Authority

## 11.2. Road Safety Issues

- 11.2.1. The existing agricultural gate proposed to serve the cattle crush facility is located approximately 25 to 30 metres to the north of the facility and approximately 15 metres to the south of the T junction. Having inspected the site, I note that the junction in question was not heavily trafficked. However, the site was inspected during Level 5 Covid restrictions where traffic movements would be greatly minimised. It should be borne in mind that the existing access gate is located directly opposite a surface car park associated with a public house as a public house was not operating at the time of the site inspection it is difficult to assess whether or not the junction is relatively busy. The fact remains that the existing access gate is less than 20 metres from the T-junction and I would agree with the conclusions of the Ballina Municipal Engineer that an access at this location would constitute a traffic concern with such limited sightlines.

- 11.2.2. The appellant in the grounds of appeal suggest that the proposed cattle crush facility would allow for a vehicle and trailer to back fully into the field and thereby would not protrude onto the public road thus creating a traffic hazard. It is not altogether clear from the information contained on file as to why the current access arrangements necessitate vehicles protruding onto the public road whereas the proposed development will allow for vehicles to pull fully into the field in question. There appears to be no works proposed in terms of a new trackway within the access gate under the current application. In times of excessively wet weather it may not be possible to drive heavily laden vehicles into the field for the purposes of loading or unloading cattle.
- 11.2.3. Any proposal to locate a cattle crush and associated apron area at this location is in my view likely to generate more activity in terms of transporting, loading and unloading cattle to and from the site at an access gate which is in close proximity to a junction and therefore I would again concur with the Planning Authority that the development as proposed could give rise to traffic safety issues and could result in a traffic hazard.

### 11.3. **Flooding Issues**

- 11.3.1. The Board will be aware that a similar type facility, was proposed within 30 metres of the proposed facility and was refused planning permission by Mayo County Council under Reg. Ref. 13/48 and this decision was upheld on appeal under PL16.242279 in 2013 on the basis of flooding.
- 11.3.2. In determining the current application Mayo County Council requested that the applicant submit a flood risk assessment by way of additional information. It is clear from the OPW flood hazard maps that there has been past flooding events to the immediate north and immediate south of the subject site. Both flood events are referred to as “recurring floods”. While the flood risk assessment concludes that the subject site is unlikely to flood, provided that finished floor levels are at 1.02 metres or above, it is clear from Section 5 of this report that this conclusion is “inferred” and that the site is “unlikely to be at risk of flooding up to and including the 0.1% AEP”. It is my considered opinion that the conclusions in this regard cannot be considered definitive. And having regard to the Board’s decision in relation to the previous application on the site c.30 metres to the north I do not consider that the Board can

be satisfied that the current application before it is not also at risk of being inundated by flood waters during a flood event. Again having regard to the effluent likely to be generated on the concrete apron any flood event could prove to have adverse impacts on water quality associated with the nearby river.

#### 11.4. Other Issues

11.4.1. One of the observations submitted argues that the accommodation of cattle on the subject site could give rise to residential amenity issues through noise pollution due to its proximity to a dwellinghouse and public house in the vicinity. The lands in question are un-zoned and used for agriculture. It is not reasonable or tenable in my view that agricultural activities should be refused planning permission on agricultural lands on the basis that it could impact on adjoining residential amenity. The observer in this instance is also a cattle farmer and it could be likewise argued that cattle associated with his farm could give rise to residential amenity issues. Any arguments in this regard should be set aside by the Board where it minded to uphold the decision of the Planning Authority and refuse planning permission.

#### 12.0 Appropriate Assessment

12.1. The subject site is hydrologically connected within a Natura 2000 site to the north the Natura 2000 site being the Killala Bay/Moy Estuary SPA (Site Code: 004036).

12.2. The qualifying interests associated with this SPA are:

- *Ringed Plover*
- *Golden Plover*
- *Grey Plover*
- *Sanderling*
- *Dunlin*
- *Bartailed Godwit*
- *Curlew*
- *Redshank*



- *Wetlands and Water Birds*

12.3. Having regard to the modest nature and scale of the proposed development which involves the provision of a concrete apron and a series of reinforced retaining walls together with the nature of the receiving environment and the proximity to the nearest European site, over 3 km to the north, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **13.0 Conclusions and Recommendation**

Arising from my assessment above I consider that the decision of Mayo County Council should be upheld in its entirety in respect of the 3 reasons cited, and that planning permission should be refused for the reasons referred to in the Planning Authority's decision.

### **14.0 Decision**

Refuse planning permission based on the reasons and considerations set out below.

### **15.0 Reasons and Considerations**

1. It is considered that it has not been demonstrated to the satisfaction of An Bord Pleanála that the proposed cattle crush and the effluent generation associated with the facility would not give rise to water pollution affecting the quality of the Palmerstown River by way of general pollution and by way of increased nutrient loadings. The proposed therefore if permitted would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed development will endanger public safety by reason of a traffic hazard because of the additional turning movements the development would generate on a road where sightlines are restricted in a northerly direction.

3. The appeal site is located in an area that has been historically prone to flooding. Development in this zone should be avoided and are only considered in exceptional circumstances. Having regard to this fact the proposed development would be contrary to the planning system and Flood Risk Management Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in November, 2009 which advised against locating development in areas at risk of flooding and it is considered that insufficient justification exists for the development of a type proposed at this location. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Paul Caprani,  
Senior Planning Inspector.

28<sup>th</sup> April, 2021.