An Bord Pleanála

Inspector's Report ABP 309122-21

Development	Retain and complete agricultural anaerobic digestion facility and combined heat and power pump and associated works.
Location	Dromkeen West, Causeway, Tralee, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/673
Applicant	Sandford Energy
Type of Application	Permission & Retention Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3rd Party v. Grant
Appellant	(1) Roy Dineen (2) Peggie & Jackie O'Carroll (3) Ann Walshe & Others (4) Wym O'Connell

Observer	Kerry Education and Training Board
Date of Site Inspection	10/05/21
Inspector	Pauline Fitzpatrick

Contents

Note: This is the 2nd appeal relating to an agricultural anaerobic digester on the site. File reference ABP 204149-19 refers.

1.0 Site Location and Description

1.1. The site is as previously described on appeal ref. ABP 304919-19 and is as follows:

1.2. The site is located to the south west of the centre of Causeway, a village on the R551 between Ballyduff to the east, and Ballyheigue to the west. The site is bounded by Causeway Hurling Club grounds and Causeway Comprehensive School to the north with the lands to the west and south in agricultural use. Causeway ESB substation is to the south-east.

1.3. The site is accessed by means of a farm track off the western side of local road L-1034 within the 50 kph speed limit of the village. There is evidence of works relating to a new access to the south of the existing access.

1.4. The site, which has a stated area of 1.61 hectares, is relatively flat. This area is served by a network of open drainage ditches that connect to the River Crompaun to the east, which is a tributary of the River Brick and, ultimately the River Feale, which flows into the mouth of the Shannon. To the north, the land rises gently and so the majority of the village and the said school are elevated in relation to the site.

1.5. The site has been partially developed with a view to providing an agricultural anaerobic digester facility. There is a silage base with walls on three sides and a dividing wall. The two sheds on site are presently in use for the storage of agricultural machinery and fodder. Partial excavation for Digester No.2 with stone and gravel is in place in addition to the construction of an, as yet, uncovered underground tank. A mobile home was noted along the eastern boundary.

2.0 Proposed Development

2.1. The application was submitted to the planning authority on the 28/07/20 with further plans and details received 18/10/20 and 30/10/20 following requests for further information dated 18/09/20 and 23/10/20 with revised public notices received 19/11/20.

2.2. The proposal is for an anaerobic digester and combined heat and power facility and includes:

2.3. Permission for:

- 2 no. anaerobic digester tanks
- 1 no. storage tank with associated sump tank
- Biogas flare
- ESB substation
- Concrete underground covered soiled water tank
- Percolation area for soiled yard rainwater with class 1 oil interceptor/separator and silt traps

2.4. Retention permission for:

- Retain and complete building containing CHP engine and control room and pasteurization pump room and offices
- 1 no. machinery garage/workshop
- 1 no. underground concrete tank
- Entrance

2.5. The overall throughput of feedstock will be c. 14,000 tonnes per annum as follows:

- 5,000 tonnes of grass silage
- 5,000 tonnes of maize silage
- 2,000 tonnes of sugar beet
- 2,000 tonnes of cattle slurry

2.6. The feedstock is to be sourced from the adjacent farm.

2.7. The application is accompanied by:

- Water Management Plan amended by Surface Water Drainage Report submitted by way of FI
- Appropriate Assessment – Screening (amended by FI)
- Environmental Noise Impact Report

- Odour Dispersion Model Report
- Public Safety Assessment Proposal
- Report on Agricultural Anaerobic Digestion Facility
- Waste Management Plan Construction and Demolition Waste
- Plate Loading Test Report
- Correspondence from the EPA and Department of Agriculture
- Management Plan for Control of Japanese Knotweed

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 17 conditions. Of note:

Condition 3: (a) All environmental mitigation measures to be fully implemented and (b) no change to development as described which would or is likely to result in a material change or increase in nature or quantity of any emissions, abatement/treatment of any emissions or site management and control with adverse impact on environmental emissions (d) The overall quantity of materials accepted shall not exceed 14,000 tonnes per annum (e) Food waste not to be accepted and (f) deliveries to be between 0700 and 1800 Monday to Saturday.

Condition 4: Noise requirements including erection of acoustic barrier.

Condition 5: Air emissions and odour requirements. The emission stack serving the CHP to be a minimum of 10 metres high.

Condition 6: Surface water disposal requirements

Condition 9 and 10: Measures to be undertaken in the event of an incident/accident.

Condition 11: Record of complaints

Condition 12: Nutrient management plan requirements

Condition 13: Waste Management and Disposal Plan and appointment of operations and environmental manager.

Condition 17: Landscaping requirements.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **1st Planner's** report dated **17/09/20** recommends FI on Water Management Plan, use of Bio Toilet, updating of AA Screening Report, Invasive Species Management Plan, commencement notice and external finishes. The **2nd report** dated **15/12/20** (countersigned) contains the AA-Screening report from the Biodiversity Officer dated 14/12/20 which concludes that AA is not required as significant effects have been excluded. It is considered that having regard to the permission granted under ref. 11/539, the substantial works that have taken place and the agricultural nature of the development, the proposal is considered acceptable. Permission recommended subject to conditions.

3.2.2. Other Technical Reports

The **1st repor**t from **Environment Section** dated **16/09/20** recommends FI on the Water Management Plan and the Bio Toilet proposed. The **2nd report** dated **09/12/20** following FI has no objection subject to conditions.

The **1st report** from the **Biodiversity Officer** dated **17/09/20** which contained AA Screening recommends further information on proposed management of water on the site and invasive species management plan. **Note**: The 2nd report following FI is included in the Planner's report dated 14/12/20 summarised above.

The **1st report** from **Building Control** dated **11/08/20** recommends that the retention application be deferred pending receipt of a valid application for a Regularisation Certificate to the Building Control Authority. The **2nd report** dated **03/11/20** notes that a Fire Safety Certificate is required.

Roads Section in a report dated **27/11/20** has no objection subject to conditions.

County Archaeologist states no mitigation required.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised are comparable to those in the 3rd party appeals and observation summarised in section 6 below.

4.0 Planning History

11/539: permission granted in February 2012 for an agricultural anaerobic digestion facility with inputs of 11,315 tonnes per annum (8625 tonnes of grass silage and 2500 tonnes of cattle manure) with a generation of 380kW of electricity.

14/276: application for an agricultural and food waste anaerobic digestion facility, comprising biomass, feedstock storage and feed facilities and food waste reception (inputs would total 20,000 tonnes per annum, i.e. 10,000 tonnes of non-food and 10,000 tonnes of food). The application was withdrawn following a request for further information.

A warning letter and enforcement notice were served on the applicant on 4th April and 25th May 2018, respectively.

ABP-304149-19 (18/762): retain and complete an agricultural anaerobic digestion facility including combined heat and power engine and ancillary site works. Inputs to be 14,000 tonnes per annum.

The Board refused permission in June 2020 for 2 reasons which can be summarised as follows:

1. Applicant has failed to demonstrate that the proposal would be served by a satisfactory surface water drainage system, how soiled and clean water would be kept separate and how the measures proposed for the disposal of soiled surface water would be compatible with the operations of the anaerobic digestion facility especially during periods of heavy rain. In these circumstances the proposal would give rise to the pollution of adjoining land drains with adverse implications for water quality and potentially public health.
2. On the basis of the information provided with the application and appeal and in the absence of a NIS the Board cannot be satisfied that the proposed development individually or in combination with other projects would not be

likely to have a significant effect on the Lower River Shannon SAC or any other European Site in view of the site's Conservation Objectives. In such circumstances it is precluded from granting permission.

Note: the said appeal follows leave to appeal granted to Kerry Education and Training Board and Jackie and Margaret O'Connell under refs. ABP-304172-19 and ABP-304191-19.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015 – 2021

The site is outside the settlement boundary around the village of Causeway[1] and in an area zoned Rural General, which is also a Structurally Weaker Area.

Section 12.3.1 - Rural landscapes within this designation generally have a higher capacity to absorb development than the previous rural designations. It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Section 13.12 addresses agricultural buildings.

Variation 8 to the Kerry County Development Plan 2009 – 2015 pertain to the Renewable Energy Strategy 2012 (RES). Under the heading of bioenergy, this Strategy discusses biomass, combined heat and power (CHP), and anaerobic digestion and accompanying Objectives are set out. Amongst these, the following three are of particular relevance to the current proposal:

NR 7-47: Proposals for the development of a commercial bioenergy should be close to the point of demand and be served by public roads with sufficient capacity to absorb increased traffic flows and adjacent to transport corridors.

NR 7-48: In rural areas the planning authority will consider proposals for small scale developments close to the source material and where roads have capacity to absorb

[1] Causeway Local Area Plan is included within the Tralee/Killarney HUB Functional Local Area Plan 2013 – 2019

increased traffic flows. Such plants should, where possible, be located in proximity to existing agricultural buildings.

NR 7-50: Bioenergy installations shall not be permitted in areas where such developments may affect residential or visual amenity.

5.2. Natural Heritage Designations

The Lower River Shannon SAC (site code 002165) c. 7 km to the east at its nearest point.

5.3. Environmental Impact Assessment

5.3.1. I refer the Board to the EIA screening undertaken by the Inspector on the previous appeal. Having regard to the fact that (a) the nature and extent of the development is, to a large extent, the same as that subject of the previous assessment, (b) the receiving environment is the same as that previously described and (c) there is no change in the policy framework and provisions, I consider that the screening and the conclusions reached therein are applicable in the current case.

5.3.2. In summary under the proposal, the following quantities of materials would be used in the process annually:

- 5000 tonnes of grass silage,
- 5000 tonnes of maize silage,
- 2000 tonnes of sugar beet, and
- 2000 tonnes of cattle slurry.

5.3.3. Under Article 2(1)(f) of the Waste Framework Directive 2008/98/EC, “waste” is defined as excluding “straw and other natural non-hazardous agricultural…material used in farming…or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.”

5.3.4. Under Article 2(2)(b) of this Directive, “waste” is defined as including “animal by-products…which are destined for use in a biogas…” Such products include cattle slurry.

5.3.5. Under Item 11(a) of Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 – 2019, mandatory EIA is required where waste installations would have an annual intake greater than 25,000 tonnes. Under the current proposal, the annual intake would be 14,000 tonnes, but only 2000 of these would come within the aforementioned definition of “waste”.

5.3.6. The current proposal is sub-threshold and so it requires to be the subject of a preliminary examination.

5.3.7. I do not consider that the proposal development falls within class 6(d) of Part 2 in that it is not an integrated chemical installation for the storage facility for petrochemicals and chemical products.

5.3.8. In terms of the four questions that arise in a preliminary examination I note the following:

Is the size or nature of the proposal exceptional in the context of the existing environment?

5.3.9. The site is 1.61 hectares in area and the footprints of the proposed buildings and structures would aggregate to 3,025 sqm. Aspects of the proposal would have an agricultural character and aspects would have an industrial character. Overall the proposal would have the appearance of an agricultural development on the periphery of the Village.

Will the development result in the production of any significant waste, or result in significant emissions or pollutants?

5.3.10. The proposal is for the retention and completion of an agricultural anaerobic digestion facility. The digestate from this facility would be spread as a fertiliser on the applicant’s farmlands, which lie in the surrounding area and beyond. Impacts from the facility would affect noise, odour, and air quality within the said surrounding area. Reports addressing these issues accompany the application which conclude that the impacts would be capable of being satisfactorily mitigated.

Is the proposal located on, in, adjoining or have the potential to impact on an ecologically sensitive site or location?

5.3.11. The site does not lie within a Natura 2000 site or a NHA site. There may be a source/ pathway/receptor route between this site and watercourses that discharge into the Lower River Shannon SAC.

Does the proposal have the potential to affect other significant environmental sensitivities in the area?

5.3.12. The site is not within an area of any known archaeological interest and is not in an area designated to be of scenic amenity.

Conclusion

5.3.13. Having regard to the nature and scale of the proposal it is considered that the issues arising from the proximity/connectivity to a European Site can be adequately dealt with under the Habitats Directive (Appropriate Assessment) as there is no likelihood of other significant effects on the environment. The need for EIA can, therefore, be excluded at this pre-examination stage.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Roy Dineen

- The nature and extent of the development in unclear with inadequate details in the supporting plans.
- The proposal is the same as that refused permission by the Board save for minor alterations to the drainage system. The site drainage proposals are unclear on the plans.
- It is unclear whether the attenuation tank/area is a tank or a hardcore filled percolation area/soakaway. Its purpose is queried. There appears to be a line, probably a drain, exiting from it and flowing to the watercourse. If the tank is to collect soiled/contaminated water then such soiled/contaminated water would discharge to the said drain. If it is considered to be clean uncontaminated water the need for the tank is questioned.

- The applicant did not provide any detail as to the welfare facilities to be provided on site. There is the possibility that the discharge from same would be piped to the digester. Not providing such facilities would be contrary to public health guidelines.
- His water supply is by way of a private well 62 metres deep, located 450 metres from the site.

6.1.2. **Peggie & Jackie O'Carroll**

- The proposal could have an adverse impact on their lands adjoining the site and devalue it from a development point of view.
- It could give rise to odour, release of gases and pollution, noise and nuisance.
- The proposal was refused previously by the Board. It had no confidence in the proposed drainage systems.
- There is nothing in the current application to indicate an improvement in proposals.

6.1.3. **Ann Walshe and Others**

- The proposal is the same as that previously refused permission.
- Adverse impact on the amenities of the area including devaluation of property.
- Site's proximity to the school and sports field.
- There are concerns about water and soil contamination generated during the construction and operational phases.
- Health issues with regard to air borne contaminants in addition to noise. The proposal is to operate 24 hours a day.
- It does not contain a proper safety assessment. There are concerns about public safety, fire and explosion.
- The drainage system proposed does not represent an improvement on the one previously assessed. It constitutes the same pollution risk to the surrounding area and the Lower River Shannon SAC.
- The traffic generated would adversely impact on the local road.

- Noise, air quality and smells are of concern. It is not shown how the prevention measures included in the consultant reports will be put in place.

6.1.4. **Wym O'Connell**

Nature and Extent of Development

- The planning authority's decision to consider the application and the subsequent grant of retention permission has the effect of overturning the Board's previous refusal. This is understood to be contrary to Section 50(2) of the Planning and Development Act 2000, as amended.
- The provisions of Section 162(3) of the Planning and Development Act, 2000, as amended, have not been adhered to by the County Council.
- The substantive works undertaken on site occurred after the relevant permission 11/539 had expired.
- The nature and extent of the development as given in the revised public notices does make not reference to significant elements of the development including the drainage channel which has been excavated in a southerly direction from the facility. There are also inconsistencies/errors associated with elements of the development on the drawings. The reference to a water attenuation tank is erroneous and misleading.

Surface Water Drainage

- A hydrological assessment prepared by a suitably qualified person has not been submitted. The full extent of the land drains in the vicinity of the site including the large channel excavated on the site have not been identified.
- The proposed surface water drainage system is inappropriate. It is, in effect, a rainwater attenuation scheme designed on the basis of the soakaway principle, of the kind suitable for an extensive site with limited contamination risks, such as a car park.
- Scaled drainage system drawings have not been submitted. The details available on file are insufficient and ambiguous and are not consistent with the representation of the process elements included in the QFT/NviroServ report accompanying the application.

- The extent of impermeable and permeable surfaces proposed as part of the surface water drainage system are not delineated. It is not clear as to how separation of clean and contaminated waters can be achieved in practice on the concrete hardstanding/paved areas. While reference is made to collecting the most heavily contaminated waters and diverting them to the anaerobic digester process plant the channels by which this would be done have not been identified in the documentation. Therefore, it is not possible to comprehensively assess the functioning/behaviour of the proposed surface water strategy.
- It has not been demonstrated as to how contaminated waters collected on the impermeable surfaces are to be prevented from infiltrating to ground via the impermeable (sic) areas of the site directly adjacent.
- The strategy whereby it is proposed that anaerobic digestion process equipment be utilised to contain and disposed of all soiled water does not appear to be credible when both the extent of the drained area and the annual rainfall are considered.
- The range of treatment measures proposed in the Surface Water Drainage Strategy report including proprietary in-line silt traps, class 1 by-pass separator and gravel infiltration strips do not address the full range of potential contaminants generated by the proposal nor are they suitable to manage the risk of large volume flows of contaminated liquids which the development presents in flood/high rainfall events and spillage/tank failure scenarios.
- The open infiltration trenches proposed around the digester tanks and to the rear of the silage pits appear to provide a direct contamination route which would direct pollutants both to groundwater and also directly to the land drains in a flood/high rainfall event.
- The plastic covering to the silage pits does not constitute a roof and it is not credible that is should be considered as such for the purpose of calculating rainwater catchment. The drainage solution is dependent on these coverings maintaining a positive fall towards the rear wall of the silage pads at all times. This seems improbable particularly when the quantity of silage diminishes and is the opposite of established silage storage convention where the plastic

coverings typically fall in the opposite direction towards the front of the pads. Issues of contamination arise.

- The proposal to run a pipe connecting the digestate storage tank underground sump to the stone infiltration area to the south-east of the site would suggest that it is proposed to direct the digestate spillage contained in this sump to ground via this infiltration area and represents a significant potential source of groundwater contamination and, in turn, contamination of adjacent land drains.
- Due cognisance has not been given to the significant day to day operational risks, in particular the contamination risks presented by the storage and loading of feed stock, the unloading and removal of the processed digestate, the large volumes of anaerobic digestion process liquid material contained in the anaerobic digestion tanks and the digestate storage tank and the significant pollution risk in the event of a spillage or tank failure, particularly if such an occurrence were to coincide with a significant rainfall or flood event.
- The process equipment eg. gas purification, pasteurisation equipment heat exchanger etc.) will produce potentially harmful effluents and condensates which will require treatment and disposal. These are not addressed.
- The ramifications of condition 6(c) attached to the planning authority's decision are far reaching in terms of the bunding required and how this will interact with the proposed surface water drainage strategy.

Land Use Policy

- The proposal constitutes a medium sized facility as per the definition in section 7.4.7.4 of the Kerry Renewable Strategy and will deal with the wastes of several farms. It is not consistent with RES Objective NR 7- 48 of the Development Plan which allows for consideration of small scale development in rural areas and therefore appears to be a material contravention of the Plan.

AA- Screening

- The amended Stage 1 AA – Screening Report does not describe the unauthorised works as part of the existing baseline. The impacts of these unauthorised works have not been considered.
- Measures to be included in the proposed drainage system including percolation area, oil traps and silt traps constitute measures to avoid or reduce the harmful effects of the project on the European Site. Mitigation measures cannot be taken into consideration at screening stage.
- In the absence of a NIS there is insufficient objective information available to allow for the assessment to be made that the development individually, or in combination with other plans and projects, would not be likely to have a significant effect on the Lower River Shannon SAC.

Public Safety

- A project specific public safety assessment has not been included. The public safety risks include risk of explosion and flash fire scenarios and risk to human health.
- The site is in close proximity to the Kerry ETB complex.
- Need for a fire safety certificate.
- The applicant has not provided any information quantifying the volume of gases to be produced nor has the proposed gas storage pressure been clearly defined. It has not been demonstrated that the maximum quantity of biogas present on the site at any one time could never exceed 10 tonnes. The potential for a Seveso Risk cannot be excluded. Applying the precautionary principle it must be considered as a lower tier establishment.
- The Inspector on the previous appeal on site concluded that the development is analogous to that considered in legal case Halpin v. An Bord Pleanala & Ors (2019) IEHC 352.

Environmental Impact Assessment Screening

- The development is subthreshold Class 11b, Part 2 Schedule 5 of the Planning and Development Regulations, 2001, as amended.

- The nature of the proposal is exceptional in the context of the existing receiving environment in that it introduces a project with the potential to cause major accidents with associated implications for human health and the environment where no equivalent source of risk currently exists and where there are extant sensitive land uses.
- The application should have necessitated a determination with reference to Schedule 7 of the Regulations.
- It can also be seen to fall within class 6(d), Part 2, Schedule 5 – storage facilities for petrochemical and chemical products where such facilities are storage to which the provisions of Articles 9, 11 and 13 of the Council Directive 96/82/EC apply. There is no threshold thus EIA is mandatory.
- As retention forms part of the proposed development the planning authority is precluded from considering the application.

Other Issues

- There is concern that conditions are being used to address outstanding issues including condition 7 (welfare facilities), condition 12 (Nutrient Management Plan) and condition 13 (evaluation and quantification of all construction waste likely to arise and development of waste management plan of waste arisings).
- The presence of Japanese Knotweed presents significant environmental and safety concerns.

6.2. Applicant Response

The response by Philip O'Dwyer Agricultural Consultant on behalf of the applicant, which is accompanied by copies of documentation submitted with the application, can be summarised as follows

- The applicant has taken account of the Inspector's suggestions and opinions on the previous appeal.
- The current application delineates a more stringent method of separating soiled water from clean water on site. A comprehensive report on treatment and control of surface water accompanies the application.

- The system is designed to cater for all eventualities.
- An underground storage tank in front of the digestate storage tank is to be provided. This area will have a power washer so that the vacuum tank which will take the digestate to be spread will be washed before leaving the site.
- A Class 1 bypass oil separator will be installed on the storm water discharge from the clean yard area.
- The AA- Screening has been revised following the Board's refusal of permission. The site is 5-8km from the Lower River Shannon SAC.
- Odour, Air and Noise reports were prepared.
- Feedstock is to be sourced from local farms. The volume of digestate will be slightly less than 14,000 tonnes depending on water content or dry matter content. It will be land spread. Any digestate produced during the closed season will be stored on site in the covered storage tank. A Nutrient Management Plan was submitted with the application.
- A Health and Safety Statement has been prepared. Project Supervisor has been identified.
- The CHP engine will be contained in a soundproof container and will be inside a building. There will be minimal gas stored on site ie. less than 4 tonnes. As it is produced it will be fed into the CHP to produce electricity.
- A contract has been signed with a company to monitor the environmental impacts of the plant.
- Toilet facilities are not considered necessary.
- The applicant will engage with the Fire Authority in terms of commencement notice.
- Traffic assessment has been undertaken.
- A waste facility permit is not required.
- An Invasive Species Management Plan has been prepared.
- AD facilities must have its own entrance.

- The development bounded by earthen banks. It will not be visible from the school or the village. An acoustic barrier is proposed along the northern side. When completed, the site will be completely landscaped.
- The proposal is a small, family farm based AD plant with less than 500kW. This is what is envisaged by development plan objectives NR 7-48 and EP-11.
- There is potential for installation of a District Heating System to heat community buildings in the village including the school.
- The site is outside the boundary of the Causeway LAP. It is not suitable for residential development due to the existing and potential overhead powerlines to the substation.
- Issues in terms of the validity of some of the appeals and accuracy of details therein raised.
- The grant of permission for a central gas injection facility near Mitchelstown Co. Cork will pave the way of the development of more than 20 local AD plants in the region. AD facilities will help reduce the oversupply of potential feedstock.

6.3. Planning Authority Response

The planning history on the site is detailed. All objections received were read and factored into the assessment. The Planning Authority advocates this type of sustainable development proposal.

6.4. Observations

The observation from Kerry Education and Training Board can be summarised as follows:

- The site is hydrologically linked via Crompaun River and River Brick to the Lower Shannon River SAC. The proposal includes measures to mitigate the potential for impacts. The Boards obligations in terms of AA are noted.

- Mitigation measures are used to screen out need for AA. The conclusion is not based on best scientific evidence nor does it indicate that there is no reasonable scientific doubt as to that conclusion. There is also no in-combination assessment of other plans or projects.
- Condition 6(e) requires the installation of a class 1 by-pass oil-interceptor system.
- Concerns regarding increased traffic
- Safety and welfare of staff and students
- Noise, air quality and odour issues.
- Compliance with conditions queried.

7.0 **Assessment**

I consider that the issues arising in this case can be assessed under the following headings:

- Overview
- Surface Water Drainage
- Appropriate Assessment

7.1. **Overview**

7.1.1. The current proposal before the Board, in terms of the nature and extent of the development for which retention permission and permission is being sought, is largely the same as that subject of the previous appeal under ref. ABP 304149-19 and refused by the Board in June 2020. It entails an anaerobic digester and combined heat and power facility with the overall throughput of feedstock of 14,000 tonnes per annum and energy output of 500kWh. All feedstock will be sourced from an adjacent farm. Approx. 10% of the electricity generated will be used on site with the remainder fed into the national grid via the substation to the south-east of the site. The alterations arising in the current application pertain to the surface water drainage management on the site in response to the 2 reasons for refusal cited in the Board's decision.

Procedural Issues

7.1.2. At the outset I note that there is no legal impediment to the applicant lodging a further application for permission to address the issues arising in the Board's refusal of permission. I also consider that the public notices are satisfactory and give sufficient detail as to the nature and extent of the development for which permission is being sought.

Biogas and Seveso III Directive

7.1.3. This matter was raised on the previous appeal and is again raised by appellants. The issue is whether the gas storage arising from the process would exceed 10 tonnes which would result in the site being an 'establishment' for the purposes of the Major Accidents Directive. Reference is made to the judgement in Halpin v. An Bord Pleanala & Ors. The said case pertained to a proposed anaerobic digestion facility in Co. Meath which had a comparable feedstock input and energy output to the subject application. Judge Simons concluded that the conclusions which An Bord Pleanala reached in relation to the Seveso III Directive were unreasonable in the sense that there was no material before the Board capable of justifying its conclusions that there was no likelihood of the 10 tonne limit for biogas being exceeded.

7.1.4. It is unfortunate that the applicant did not avail of the opportunity to address this matter in a comprehensive manner in light of the issue arising in the previous appeal, the concern expressed in the previous Inspector's report and the outcome of the said legal judgement. Save for the agent for the applicant stating that less than 4 tonnes of gas will be stored on site and that as gas is produced it is to be fed into the CHP no technical information to support this assertion has been provided.

7.1.5. I submit that this matter would require further information.

Policy Context

7.1.6. I note that there is no change in the receiving environment nor the policy context since the previous assessment with the 2015 County Development Plan and 2012 Renewable Energy Strategy applicable. Having regard to the latter document and the guidance in the document titled *Guidelines for Anaerobic Digestion in Ireland* by the Composting and Anaerobic Digestion Association of Ireland I would concur with the Inspector's assessment on the previous appeal that the proposal, linked to the

applicant's farm which would generate 500kWh of electricity, would be categorised as small sized. In that context it is seen to be in accordance with objective NR 7-48 of the County Development Plan which allows for small scale developments in rural areas close to the source material.

7.1.7. I would also concur with the Inspector in his assessment pertaining to the appellants' concerns about the sterilising effects of the proposal on the development potential of adjoining lands. The site is outside the development boundary of the village as delineated in the local area plan and is zoned rural general. It is not earmarked for development.

Impacts Arising

7.1.8. In terms of visual amenities the buildings, structures and tanks would be agricultural in appearance and their scale, whilst relatively large, would not be out of proportion with the GAA grounds and adjacent school building. The resulting visual impact would be mitigated by landscaping.

7.1.9. The issues arising with regard to noise, odour, air and public safety were addressed following a request for further information by the Board on the previous appeal. The documentation submitted in that case accompanies the current application. I note that whilst the Odour and Air Model Reports have different dates to those originally submitted the contents are the same. They conclude that impacts arising can be appropriately mitigated.

7.1.10. In terms of noise an acoustic barrier along the northern boundary of the site is proposed and is delineated on the site layout plans. As can be extrapolated from section A-A and section C-C on drawing no.8 the barrier is to be 2 metres high, located inside the permitter fencing and backed by a planted berm.

7.1.11. The Nutrient Management Plan which was submitted on the previous appeal accompanies the current application.

7.1.12. Whilst a Public Safety Assessment Proposal has been submitted it does not constitute a Public Safety Assessment per se. Notwithstanding, this can be addressed by way of condition.

7.1.13. A series of recommendations in terms of the operation and management of the operation are set out in the report compiled by Qft Ireland/NviroServ which

accompanies the application and compliance with same will be required should permission be granted.

Staff Welfare

7.1.14. No staff welfare facilities are proposed to be provided on the basis that the daily workload on the site would be completed in 2/3 hours by the owner (and his son) of the adjacent farm and dwelling and they will avail of facilities there. I note that the appellants consider this matter to be of material concern. In my opinion the solution as proposed is satisfactory. Notwithstanding, I do not consider that the resolution or otherwise of the matter is fatal to the assessment of the application.

Roads and Traffic

7.1.15. In terms of traffic 3 deliveries of materials from the owner's farm will be required per day between 0700 and 0830 with 14 lorry movements per week arising from spreading of the digestate. The site is to be served by a new dedicated access. I submit that the local road can accommodate the anticipated vehicular movements arising from the development whilst concerns arising from the construction phase can be addressed by way of a construction management plan. I note that the Roads Section of the County Council has no objection to the proposal.

Conclusion

7.1.16. Save for the shortcomings in terms of addressing Seveso III assessed above, I consider that the substantive issues arising in the current case arise from the matters identified in the Board's decision on the previous case, namely the surface water drainage arrangements on site and appropriate assessment.

7.2. Surface Water Drainage

7.2.1. Surface water runoff from the site is currently transmitted to the nearby Crompaun River via a drainage ditch which runs through the fields owned by the applicant. Drainage ditches bound the site to the east, west and south.

7.2.2. The appellants do not consider that the surface water drainage system proposed in this application differs to any material extent from that proposed in the previous application with concerns expressed as to the accuracy and completeness of the information provided in support.

7.2.3. Under the previous proposal water effluent from the concrete silage yard was to be collected in drainage channels, piped to the underground slurry pit and then pumped into the digesters. The area surrounding the digesters and storage tank was to be finished in washed gravel. Surface water in this area was to be collected in underground pipes and piped to the existing drainage channels. All clean water from the eve shoots and water down pipes were to be piped directly to the existing drainage channels. The plans were considered unsatisfactory with questions arising as to the compatibility of the proposed reliance on the slurry tank. The Board refused permission for two reasons which concluded that the absence of satisfactory surface water drainage system precluded the proper assessment of the proposal.

7.2.4. The current proposal entails a revised surface water drainage system. The application is accompanied by a Water Management Plan prepared by Philip O'Dwyer which, following a further information request, was supplemented by a report prepared by Barrett Mahony Consulting Engineers Ltd.

7.2.5. I would concur with the appellants that the plans and drawings that accompany the application do not provide for a level of detail in terms of the system as proposed and the extent of, and differentiation between the varying hardstanding areas, and it is unfortunate that the applicant did not avail of the opportunity by way of further information to submit a more detailed and accurate plan. I also note that the plans provide for a level of confusion as to elements of the system proposed, notably that which appears to be an outfall from the 'attenuation area (18)' to the drain along the western boundary. The use of the terms 'attenuation area' and 'attenuation tank' in the report prepared by Philip O'Dwyer that accompanied the application in addition to details provided in the report by Qft Ireland/NviroServ which makes reference to all waste waters and rainwater being recycled within the facility also added to the confusion, although I consider that these matters have been clarified in the subsequent report by Barret Mahony Consulting Engineers Ltd.

7.2.6. As per the latter report I note that the surface water strategy as proposed involves the collection of surface water, providing a series of treatment stages, and discharging naturally to ground close to the source via infiltration in accordance with the principles of SuDS. It comprises the following:

- Rainwater falling on roof areas will be considered to be clean, uncontaminated rainwater and will be discharged using a closed pipe gravity drainage network directly to a stone filled soakaway to the west of the development.
- Rainwater falling on the main access road which is to have a tar and chip finish will be discharged to gravel infiltration trenches in the verges and infiltrate naturally back to ground via the soakaway located to the west of the development.
- Rainwater falling on hardstanding car parking and paved areas is considered to be at risk of contamination from silts and oils. As a result surface water from these areas will be transferred via a closed pipe network to a silt trap and Class 1 Bypass Interceptor in accordance with best practice drainage design and subsequently discharge naturally to ground via infiltration in a percolation area to the south of the development.
- Areas of the silage bases which are not covered by plastic are at risk of seeping contaminated water whilst the area where the digestate is collected may also receive some rainfall and pose a risk of contaminating surface water run-off in the drainage network. This rainfall will be collected locally using drainage channels and will be treated as digestate or contaminated water and will be stored within the digestate storage tank.

7.2.7. An assessment of the sub-catchment of the drained areas and design calculations for each, modelled using Microdrainage Source Control software, is provided in addition to results of onsite permeability tests.

7.2.8. The system has been designed on the basis of the following criterion with respect to BRE DG 365:

- 10 year return period + 20% allowance for Climate Change
- Half drain time to be less than 24 hours
- Assume stone porosity of 40%
- Infiltration rates taken as those gleaned from on-site percolation test
- No run-off coefficients applied (ie. take 100% impermeable area)

- Allow for Factor of Safety of 1.5 in accordance with CIRIA Report 156 Infiltration Drainage – Manual of Good Practice
- Assume zero infiltration through base of stone filled soakaway (to allow for long term siltation of the soakaway base).

7.2.9. As per section 3.9 of the report from Barrett Mahony Consulting Engineers Ltd. the applicant commits to installing silt removal measures (silt curtains) in the drainage ditches to mitigate against the risk of silt/debris reaching the Crompaun River from the development during the construction phase.

7.2.10. Whilst I note the appellants' concerns, I consider that the system as proposed in the current application differs materially from that proposed in the previous application and no longer relies on disposal to the slurry tank. As noted previously it is unfortunate that the level of detail given on the plans is somewhat lacking but I consider that the report submitted by way of further information provides for a proper description and assessment with the assumptions made clearly detailed.

7.2.11. On this basis I consider that sufficient detail has been provided at this juncture in terms of the proposed surface water drainage system to address the previous concerns but recommend that a revised site layout plan that accurately depicts the proposed drainage system and the areas of hardstanding be submitted for written agreement prior to commencement of development should the Board be disposed to a favourable decision.

7.3. Appropriate Assessment

Appropriate Assessment Screening

7.3.1. The requirement of Article 6(3) as relates to screening the need for appropriate assessment of a project under XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background of the Application

7.3.2. The applicant has submitted an Appropriate Assessment Screening Report as part of the application *Appropriate Assessment Screening for works at Sandford Energy Ltd. Dromkeen West, Causeway Co. Kerry by Ciaran Ryan M.Sc.* The report was originally dated September 2019. By way of further information the revised report was dated 28th October 2020.

7.3.3. The applicant's Stage 1 AA Screening Report provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development. I also note the report by Barrett Mahony Consulting Engineers Ltd submitted by way of further information on the proposed surface water drainage system to be put in place.

7.3.4. The applicant's AA Screening Report concluded that there is no expected impact on any Natura 2000 sites hosting designated and notable habitats and species, notably the Lower River Shannon SAC. This SAC is considered to be the only Natura 2000 site that could be potentially impacted by the proposed development. As such, there will be no impact on the Conservation Objectives for this SAC (as per NPWS database).

Screening for Appropriate Assessment – Test of Likely significant effects

7.3.5. The proposed development is not directly connected to or necessary to the management of any European site and, therefore, it needs to be determined if the development is likely to have significant effects on a European sites(s).

7.3.6. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief Description of the Development

7.3.7. The applicant provides a description of the project in section 1.2 of the AA screening report. In summary an anaerobic digester and combined heat and power facility with the overall throughput of feedstock of 14,000 tonnes per annum and energy output of 500kWh is proposed. All feedstock will be sourced from an adjacent farm. Approx. 10% of the electricity generated will be used on site with the remainder fed into the national grid via the substation to the south-east of the site.

7.3.8. The site, itself, is described in section 4 of the AA Screening report. It comprises a part constructed site with a silage base with walls on three sides, 2 no sheds, an as yet uncovered underground storage tank and some hard core. The site is bounded by deep drainage ditches to the south, east and west. These drains discharge off site southwards into a stream which is the upper reaches of the Crompaun River

which runs in an easterly direction eventually flowing into the River Brick c.7 km downstream. River Brick forms part of the SAC

7.3.9. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Surface water pollution arising from discharges of contaminated surface water drainage during construction and operational phases.

Submissions and Observations

Mr. Wym O' Connell, 3rd Party appellant, and Kerry Education and Training Board, an observer, note that mitigation measures are used to screen out the need for AA and that the conclusion is not based on best scientific evidence nor does it indicate that there is no reasonable scientific doubt as to that conclusion.

European Sites

7.3.10. The development site is not located in or immediately adjacent to a European site.

7.3.11. A summary of the European Sites that occur within a possible zone of influence of the proposed development is presented in the table below.

Identification of likely effects

7.3.12. The site is hydrologically connected to the Lower River Shannon SAC by reason for the drainage ditches that bound the site which flow into a stream which is the upper reaches of the Crompaun River. This flows into the Brick River c. 7km to the east which forms part of the SAC.

7.3.13. There is potential for downstream pollution arising from sediment laden surface water run-off and accidental pollution spillage during the construction phase and contaminated surface water run-off and accidental pollution spillage during the operational phase.

7.3.14. A number of the qualifying interests of the Lower Shannon SAC are sensitive to water quality.

7.3.15. Relative to the surface water drainage system proposed in the previous appeal where surface water was to be collected in underground pipes and piped to the existing drainage channels, the current development proposes to avoid discharge to

the said drainage channels in their entirety. A system which will separate contaminated and uncontaminated surface water is proposed. In terms of contaminated surface water it is to be directed via a silt trap and Class 1 Bypass Interceptor to a percolation area to the south of the development. These measures are to reduce any risk of contamination of the Crompaun River and further downstream including River Brick

7.3.16. I also note from Section 3.9 of the report from Barrett Mahony Consulting Engineers Ltd that the applicant commits to installing silt removal measures (silt curtains) in the drainage ditch to mitigate against the risk of silt/debris reaching the Crompaun River from the development during the construction phase. The AA- Screening report is silent on the proposed measures to be undertaken at construction phase.

7.3.17. Whilst it may be argued that the measures as detailed above are integral components of the proposed development, I am not satisfied that the surface water drainage system as designed and use of silt fences during construction would have been required were the concerns not highlighted by the Board in its reasons for refusal on the previous appeal or that they would have been provided in any event, irrespective of there being a European site to consider. It would be reasonable to assume that such measures would not be required were the development not surrounded by land drains. They are therefore, in effect, mitigation measures.

7.3.18. On this basis I consider that the measures could reasonably be construed as intended to avoid harmful effects on a European Site.

7.3.19. In the absence of appropriate assessment potential significant effects must be ruled out without mitigation. Case law has established precedent in this regard both in terms of consideration of mitigation and in terms of measures included as best practice construction methods. On this basis, therefore, I am not satisfied that the proposed development would not be likely to have a significant effect on the Lower River Shannon SAC having regard to its qualifying interests and should, therefore, be subject to an appropriate assessment.

Screening Determination

7.3.20. On the basis of the information provided with the application and appeal 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 European site no 002165 in view of the site's Conservation Objectives.

In such circumstance the Board is precluded from granting permission.

European Site www.npws.ie	Distance to proposed development Source, pathway, receptor	Possible effects alone	In combination effects	Screening Conclusions
Kerry Head SPA (site code 004189)	c. 4.8km to north	No possibility of effects due to the separation distance No suitable habitat for species on site.	No possibility of incombination effects.	Screened out for need for appropriate assessment.
Tralee Bay SPA (site code 004188	6.5 km to south-west	No possibility of effects due to the separation distance No suitable habitat for species on site.	No possibility of incombination effects.	Screened out for need for appropriate assessment.
Lower River Shannon SAC (site code 002165)	7 km to east Hydraulic connection via surface drains	Potential impacts to water quality and water dependent habitats may result in significant effects alone.	Possible- requires more detailed analysis.	Possible significant effects cannot be ruled out without further analysis and assessment and the application of mitigation measures- **Appropriate assessment required**.

Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161)	c. 12 km to the south-east	No possibility of effects due to the separation distance No suitable habitat for species on site.	No possibility of incombination effects	

8.0 **Recommendation**

In conclusion, whilst the applicant has addressed the Board's previous concerns in terms of details of the surface water drainage system, the incorporation of measures into the said system and consideration of measures both at construction and operational stages, in my opinion, equate to mitigation measures to address the hydrological connection to the Lower River Shannon SAC via the drains bounding the site discharging to the Crompaun River. Such mitigation measures cannot be taken into account in screening for appropriate assessment. In view of same and adopting a precautionary approach I recommend that permission for the above described development be refused for the following reasons and considerations.

9.0 **Reasons and Considerations**

On the basis of the information provided with the application and appeal 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 European site no 002i65 in view of the site's Conservation Objectives.

In such circumstance the Board is precluded from granting permission.

Pauline Fitzpatrick
Senior Planning Inspector

June, 2021