



An
Bord
Pleanála

Inspector's Report

ABP-310396-21

Development	Demolition of sheds and erection of slatted unit and machinery shed.
Location	Breaffy South, Miltown Malbay, Co. Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	20930
Applicant(s)	Michael O'Neill
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Aoife Gaffney, Sylvester McMahon and Darren McMahon
Observer(s)	Patrick Boland and Rosemary Day Noel Lahiff and Others
Date of Site Inspection	21/01/2022.
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The site is located in Breaffy South, Milltown Malbay in County Clare, c. 1.4km west of zoned lands of Milltown Malbay and c. 400m east of zoned lands to Spanish Point. The site is accessed by a local road off the R482 which joins the N67 to Spanish Point.
- 1.2. The local road primarily serves agricultural lands and one-off houses. The road is reasonably well surfaced but is narrow with limited room for two vehicles to pass. The site is located below the level of a local road and the surrounding area can be generally characterised as flat lying agricultural fields. The site is wet under foot with drainage ditches evident in the area. The site is open to its surroundings with no landscaping features such as hedgerow or trees.
- 1.3. The application site does not include all of the applicants identified landholding. The red line boundary includes a narrow strip c. 9m wide to the western side of the landholding. This strip includes most of the area of an existing storage container and an agricultural building. To the immediate east of these but outside the red line is the remainder of an existing agricultural complex with non-consolidated hardstanding, a concrete apron and a large number of bales of silage/fodder. These are located within the applicants identified landholding of the applicant. The application site widens to 30 m at the rear to provide for the proposed development.
- 1.4. The application site has a stated area of 0.245 ha. The application indicates existing buildings measure 153.9 sq.m and are 3.241m high at the highest point of the mono-pitch roof. The storage container which is located closer to the public road is of a similar height.

2.0 Proposed Development

- 2.1. The development comprises of the following-
 - to demolish existing sheds 153.9 sq.m and
 - to erect slatted unit and machinery shed of 200 sq.m
- 2.2. Following a request for Further Information on the 08/02/2021 the following was submitted on the 30/03/21-

- An Appropriate Assessment Screening report titled 'Natura Impact Assessment Screening' prepared by Mary Burke of Burke Environmental Services.
- Details of filling to the site carried out by Clare County Council while completing road works in the area
- Details of landholding where applicant spreads slurry and letters of consent.
- Details of finishes to proposed structures
- Proposed planting to the site of native species.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to grant permission on the 06/05/21, subject to eleven conditions of a standard nature, including the following-

- C.2 A Construction, Demolition and Environmental Management Plan to be submitted for agreement
- C.3 The existing shed to be demolished prior to commencement of a new slatted shed.
- C.4 The development to be constructed in accordance with the current format of the Department of Agriculture, Fisheries and Food, S123 Minimum Specifications for Bovine Livestock Units and Reinforced tanks.
- C.5 Effluent and farmyard manures to be managed and disposed in accordance with EC Regs of 2017.
- C.6 Proposals for an earthen embankment around the site to be submitted for agreement
- C.9 & 10 Stock numbers shall be restricted and managed such that capacity is available to meet requirements for slurry storage and so that an excess of 170 kg of nitrogen per ha shall not be exceeded as outlined in EC Regs 2014.
- C.11 External finishes to be dark green in colour.

4.0 Planning Authority Reports

4.1. Planning Reports

- Following an initial request for further information the Planner's report raised no major concerns over the development. The report recommended that permission be granted subject to conditions which is consistent with the Notification of Decision to Grant Permission.
- The report details that the existing shed should be demolished before the new slatted unit is constructed to ensure compliance with the nature and extent of proposed works as per the public notices.

4.2. Other Technical Reports

- None on file

4.3. Prescribed Bodies

- Development Applications Unit 20/01/21 in relation to nature conservation-
 - Clare County Council must ensure it is satisfied the proposed development will not impact the conservation objectives of the European sites, including water quality.

4.4. Third Party Observations

4.4.1. One third party submission was received on the initial application and can be summarised as follows-

- There are questions over the validity of the application
- Reference is made to a number of European, national, regional and local legislation, guidelines, ministerial directives, development and local plans with further elaborations on these matters.
- The Curlew is discussed as a distinctive local specie that will be impacted by the development.

- Significant cutting and filling of the site have occurred
- Drainage works and dewatering of the site have occurred to the site creating ecological instability impacting upon biodiversity.
- The site is used on a commercial basis
- Noise, odour, disturbance and light pollution are of concern
- Size and speed of machinery using local roads
- Increased traffic to area because of commercial use
- Visual impact of the development
- The submission is accompanied by photographs

4.4.2. Representations on behalf of the applicants were made by

- Councillor Shane Talty on the 21/01/2021.
- Michael McNamara TD on the 07/04/21
- Joe Carey TD on the 30/04/21

4.4.3. Representations on behalf of Aoife McMahon were made by

- Senator Roisin Garvey on the 21/04/2021.

4.4.4. Following the request for Further Information the applicants responded on the 30/03/21. The application was readvertised as Significant Further Information with evidence of revised notices submitted on the 09/04/21.

4.4.5. A further third party submission was received and can be summarised as much of the original submission and as follows-

- Notwithstanding concerns over European Sites, biodiversity concerns remain.
- The site is a commercial yard
- The applicants did not seek the necessary road opening licence or submit required notification of completion of works.
- There already exists unauthorised development on the site.
- The applicants response to filling concerns at the site is not sufficient.
- It is considered retention is required.

- The site is not used for animal grazing as stated in the report from Ms. Mary Burke. The size of the site is not suitable to animal grazing and cannot accommodate the proposed numbers of animals.
- Concerns are raised over the applicant's landholding.
- The proposal would be backland development.
- The existing unauthorised structure is an extremely dominant structure both from the road abutting the site and the road along the coast.
- The bog is prone to significant flooding.
- Demolition of structure after completing the proposed slatted unit is unnecessary.
- Use of demolition material for landfilling requires consideration.
- Ms Burke's report does not address the impact of commercial activity.
- An increase in animal numbers has already occurred and the report appears to be based on a lower number.

5.0 Planning History

This Site-

- None recent
- The Planners Report refers to an Unauthorised Development history at the site under reference number UD 21/014 and that the file is 'open'.

Nearby-

- 16/342- extension to house and retention of conservatory and private garage.
Grant, 18/07/2016

6.0 Policy Context

6.1. National and Regional Policy Context

6.1.1. The National Planning Framework

- Section 5.3 Planning for the Future Growth and Development of Rural Areas- Countryside P.74

The Irish countryside is, and will continue to be, a living and lived-in landscape focusing on the requirements of rural economies and rural communities, based on agriculture, forestry, tourism and rural enterprise, while at the same time avoiding ribbon and over-spill development from urban areas and protecting environmental qualities.

- Section 5.4 Planning and Investment to Support Rural Job Creation P.75

Rural areas support a mix of businesses of varying sizes, operating in a wide range of sectors from the traditional, such as agriculture and tourism, to more modern industries such as financial services and creative industries....

....Ireland's natural resources are some of our greatest assets and through the development of the agriculture, food, forestry, tourism and renewable energy sectors, this will not only sustain rural employment, but also contribute to driving the national economy.

- Agriculture P. 76

The agri-food sector continues to play an integral part in Ireland's economy and is our largest indigenous industry, contributing 173,400 direct jobs and generating 10.4% of merchandise exports in 2016. Agriculture has traditionally been the most important contributor to rural economies and it remains important as a significant source of income and both direct and indirect employment. However, it must adapt to the challenges posed by modernisation, restructuring, market development and the increasing importance of environmental issues.

6.1.2. Regional Spatial and Economic Strategy for the Southern Region-

- Section 3.7- Rural Areas

Rural areas are settlements and surrounding rural areas with a population of less than 1,500. The RSES reflects the position of the NPF, that our countryside "is and will continue to be, a living and lived-in landscape focusing on the requirements of rural economies and rural communities, based on agriculture, forestry, tourism and rural enterprise, while at the same time

avoiding ribbon and overspill development from urban areas and protecting environmental qualities.”

- Section 4.5 Rural Development- Diversity in the Rural Economy P.110

While our rural economy and society is changing rapidly, in many instances it remains dependent on traditional sectors of agriculture, forestry, fishing, and construction.

6.2. Clare County Development Plan 2017-2023 (CDP)

The subject site is located outside of identified settlement boundaries and zoned lands in the Development Plan. The site is just located within a designated 'Heritage Landscape' as per Map 13A- Landscape Designations of the CDP. The site is not located on a designated 'Scenic Route'.

The following objectives are considered relevant-

- CDP13.5 Development Plan Objective: Heritage Landscapes

It is an objective of the Development Plan:

To require that all proposed developments in Heritage Landscapes demonstrate that every effort has been made to reduce visual impact. This must be demonstrated for all aspects of the proposal – from site selection through to details of siting and design. All other relevant provisions of the Development Plan must be complied with. All proposed developments in these areas will be required to demonstrate:

- *That sites have been selected to avoid visually prominent locations;*
 - *That site layouts avail of existing topography and vegetation to minimise visibility from scenic routes, walking trails, public amenities and roads;*
 - *That design for buildings and structures minimise height and visual contrast through careful choice of forms, finishes and colour and that any site works seek to reduce the visual impact of the development.*
- CDP8.32 Development Plan Objective: 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).

- Appendix 1 deals with 'Development Management Guidelines'. Section A1.11 Agricultural Developments states-

The rural countryside is a natural resource with agricultural activity being particularly important. In considering proposals for agricultural development (walls, fences, yards, stables, sheds, slurry pits etc.) the Planning Authority will have regard to the Department of Agriculture document Guidelines and Recommendations on the Control of Pollution from Farmyard Wastes together with the following:

- *Siting and design that is keeping with the surrounding area*
- *The use of muted coloured materials*
- *Grouping of buildings will be encouraged*
- *Adequate effluent storage facilities*
- *The Planning Authority will require adequate provision for the collection, storage and disposal of effluent produced from agricultural developments. The European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2014 set out the requirements for storage of farm effluents and the minimum holding periods for storage of farm wastes.*

In Clare the holding period required for the purposes of calculating waste storage facilities is 18 weeks. It is permitted to spread soiled water all year round, thus the minimum holding period is 10 days. For silage the short term storage period is 3 days. All agricultural developments must be designed and constructed in accordance with

the Minimum Specifications as set out by the Department of Agriculture, Food and the Marine.

6.3. Natural Heritage Designations

The site is located-

- c. 500m east of the Mid-Clare Coast SPA (004182)
- c. 500m east of the Carrowmore Point to Spanish Point and Islands SAC (001021)
- c. 500m east of the Carrowmore Point to Spanish Point and Islands pNHA (001021)

6.4. EIA Screening

- 6.4.1. An Environmental Impact Assessment Screening report has not been submitted with the application. I note the appellant has raised significant environmental concerns including impacts on biodiversity.
- 6.4.2. Schedule 5 Part 2 Article 1- Agriculture, Silviculture and Aquaculture of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for certain classes of development. Having considered these I am satisfied the proposed development does not come within the identified criteria.
- 6.4.3. Having regard to the limited nature and scale of the proposed development (replacing a similar type of development) it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 The Appeal

7.1. Grounds of Appeal

One third party appeal has been received from Aoife Gaffney, Sylvester McMahon and Darren McMahon of Breaffa South, Spanish Point, Co. Clare. The grounds of appeal can be summarised as follows-

- The appeal includes the documentation submitted with the observations to the Planning Authority, photos and video recordings on USB and DVD.
- The already submitted observations refer to-
 - National and regional guidelines and ministerial directives, policies and objectives of the development plan and local plans
 - Environmental Impact
 - Public Health and local considerations
- The Appeal discusses the site describing it as on a scenic tributary road popular with walkers and is off the Wild Atlantic Way.
- Currently an unauthorised development exists on the site. Its development has caused untold damage above and below the surface as a consequence of bog removal. The subsequent fill and existing structure require further examination.
- The site is used on a commercial basis.
- The new structure will be a 30% increase in size over the existing. It is to be located to the rear of the site and away from existing building. The proposal is excessive in scale and will generate further traffic of large commercial vehicles.
- The site is wet bogland that is prone to flooding. It has been drained by the applicant who uses a digger to keep the main drain clear at the end of the field.
- The Planning Authority sought information in relation to infilling at the site but have not pursued the matter further.

- The application lacks environmental screening and requires further consideration given the importance and possible severe consequences of the structure at this location.
- The proposed slatted unit and proposed collection and removal of animal waste with underground waste storage within a bog in close proximity to European Sites and the Wild Atlantic Way should be closely scrutinised.
- The size of the land is not capable of holding and adequately providing grazing for 26 animals as outlined in the application.
- The existing and future use of the site will see destruction and removal of large sections of the bog, resulting in irreparable damage to local biodiversity.
- The proposal will have a negative visual impact.
- Noise, smells (non-agricultural), light pollution and disturbance from use of the site and hazards from the operation are of concern.
- Nuisances include size and speed of machinery on the narrow road and generation of commercial traffic to the site. The road is used by pedestrians.
- The conditions of the Planning Authority do not include the removal of the large container

7.2. Applicant Response

The applicant's response to the grounds of appeal can be summarised as follows-

- The response details a summary of the site and the development proposed.
- The site is currently in use as an agricultural field on mainly flat ground. The lands owned by the applicant are in agricultural uses served by a 156 sq.m shed. The yard is used for vehicular movement, parking and general storage of goods for use on the lands. The existing shed does not provide animal waste storage and dung has to be removed on a regular basis. The proposed 220 sq.m slatted shed will be significantly less visually evident and will provide for collection and storage of animal waste and enclosed storage.
- There is no proposal to spread slurry on these lands. These lands are used for silage making and occasional animal grazing. Spread lands associated

with the development are located in Leaguard. Their area and adequacy have been addressed in the AA Screening Report. The distribution of slurry on these lands is undertaken in accordance with Good Agricultural Practice for the protection of Water Regulations 2017.

- Soils on the site have low permeability and often necessitate land drainage. Such drainage of the applicants lands has been undertaken in recent years. Subsoil Mapping data is provided from GSI confirming soil types. Poor percolation gives rise to ponding during heavy or prolonged rain.
- The proposed building in green cladding will be less obtrusive than the current development and local housing in the area. The existing structure and management of manure is likely to give rise to odour. The proposed development will improve the situation and meet the standards of sustainable best agricultural practises.
- There is no incursion into peatland area and no removal of bog associated with the proposed development.
- The applicant owns a digger which is subcontracted to local farmers. This use is entirely connected to agricultural practises. The scale of the shed would not accommodate significant commercial enterprise. The presence of gravel on the site was payment for works undertaken and is anticipated for works to the slatted shed.
- The farming approach is controlled in terms of its impacts by listed European Directives, Regulations and Irish legislation.
- No filling of the lands have been undertaken by the applicant.
- The Wild Atlantic Way designation does not preclude the operation of farms and their management. Views from the R482 will not be interrupted or damaged by the proposed development.
- Cleaning of drains is a regular feature and is essential to maintain flow. There is no evidence of excessive drainage. The activity does not give rise to environmental damage of interfere with protected habitats or species.

- The site is not part of a Natura Site but is linked by drainage to the Carrowmore Point to Spanish Point and islands SAC (001021) and Mid Clare Coast SPA (004182) sites. This linkage has been assessed in the AA Screening Report. The appellant has not provided evidence of direct or indirect effects on the designated sites.
- The screening report accounts for proposed animal numbers and adequacy of spread lands.
- The National Biodiversity Data Centre was examined and detailed inspections of the lands undertaken. No record of the curlew or associated habitat is found.
- Given the small scale of development, short construction period, flat topography and adequate riparian area between the proposed shed and open land drainage, together with movement of organic waste to a separate landbank for land spreading, it is considered that there will be no impact associated with the proposed development on the designated sites or local ecology in the area.
- Water Quality in the Spanish Point Bay area has been rated as excellent (2017-20).
- The AA screening report and a series of photographs accompanies the response to the appeal.

7.3. Planning Authority Response

A response has been received on the 24/06/21. It can be summarised as follows-

- The Planning Authority cannot confirm with certainty the assertion made by the appellant that the site is being used for commercial purposes.
- The applicant did not apply to retain a commercial use on the site.
- Item 18 of the application form requires the applicant to submit details regarding the flooding history. The applicant indicates the site has never flooded. This would appear to be contrary to the observations of the appellant.

- The Planning Authority raised the matter of the proximity of European Sites at FI stage. An AA Screening Report was submitted and was found satisfactory. The appellant has not clearly identified gaps in the AA screening.
- In relation to visual impact and proximity to the Wild Atlantic Way conditions regarding finishes and boundary treatment were included in the grant.
- It is acknowledged that noise, smell and disturbance will occur but these are considered as normally associated with farming activity.

7.4. Observations

Two observations were received from-

- Patrick Boland and Rosemary Day and
- 11 local signatories represented by Noel Lahiff

The issues raised can be summarised as follows-

- The observers own land bordering the proposed development and live 400 metres to the north east of it. The observers support the application in full.
- They have never experienced smells or emissions and do not believe the proposed development will give rise to any. The applicant is diligent, conscientious and keeps his property in good order. He helps keep drains in good order and the roads clear of debris. The proposed development will not give rise to loss of amenity at their property.
- The proposed development is welcomed and a beacon of light for rural agriculture and the small community.
- It will enhance the road side appearance of the property. The new building will enable best practise management of the small farm landholding.
- It will have a low visual impact and will not injure the amenity value of the area.
- The existing activity does not give rise to nuisance or disturbance in the area.

8.0 Assessment

8.1. Introduction

8.1.1. I consider the main issues in determining the appeal are as follows-

- Principle of the Development
- Matters of alleged Unauthorised Development
- Residential, Visual and Rural Amenity
- Flooding
- Appropriate Assessment

8.2. Principle of the Development

8.2.1. The site is located within a rural area where the predominant land use is agriculture. The application site and landholding includes an existing agricultural complex. I am satisfied that this agricultural proposal is consistent with the nature of development in the rural area and is broadly supported by the provisions of National and Regional policy documents as well as the Clare County Development Plan 2017-2023.

8.3. Matters of Alleged Unauthorised Development

8.3.1. Much of the appellants concerns appear to relate to alleged unauthorised development at the site. These matters include the existing buildings and structures at the site, infilling of the site adjoining the road and the use of the site for commercial development. They have included photographs of machinery and materials on the site.

8.3.2. The application includes proposals to demolish the existing structures on site. The applicants have not applied for commercial development and they have detailed the site is not in use for commercial purposes.

8.3.3. The Council's planning reports detail an open planning enforcement file at the site under reference number UD 21/014. Their Response to the Appeal makes it clear that they cannot confirm with certainty that the site is being used for commercial purposes.

- 8.3.4. The Council also sought further information in relation to filling of the lands adjoining the public road. The applicants have detailed this was carried out by the Roads Section of the Council and was no more than 400mm in depth with no adverse effect on the landscape. The Planning Authority have raised no further concerns in this regard.
- 8.3.5. Having visited and inspected the site I did not observe any use of the site that I would not consider agricultural related. I also cannot confirm that unauthorised filling of lands have taken place although I do accept lands are graded to the road at the application site. I have reviewed the photographs of machinery and materials at the site as well as delivery of materials to the site. I consider that such machinery and materials are common place on agricultural landholdings these are often used on farms for agricultural purposes including clearing drainage ditches. I accept advertising on the excavator shows 'O'Neill Plant and Groundworks' but I do consider this is evidence the site is in use for commercial purposes.
- 8.3.6. The application as proposed will serve to regularise the planning situation at the site and provide for the best agricultural practise of the landholding for such development. The application proposes animal effluent storage facilities in the new slatted structure which does not currently exist within the existing development at the site.
- 8.3.7. The proposed development is acceptable in principle in this rural area where agricultural use is clearly evident and should be encouraged. Notwithstanding the above, the matter of enforcement and alleged unauthorised development falls under the jurisdiction of the Planning Authority and not An Bord Pleanála.

8.4. Residential, Visual and Rural Amenity

- 8.4.1. The appellant raises a number of amenity related concerns including odour, noise, light pollution, nuisance and the use of the road by large and commercial vehicles. They also consider the proposal visually obtrusive having regard to the proximity of the Wild Atlantic Way and the surrounding area.
- 8.4.2. I have considered Appendix 1 'Development Management Guidelines', Section A1.11 Agricultural Developments as set out in the County Development Plan. The proposed development is for agricultural buildings on agricultural lands. This is

considered appropriate. The proposed buildings are c. 45 metres north of the existing buildings and will be located further away from existing houses in the area. The proposal will provide for best agricultural practises including effluent storage and is proposed as an improvement on the existing situation.

- 8.4.3. Following a request for further information the applicant has detailed land spreading will not take place at the application site and will occur c. 2km east in Leaguard. Land spreading is required to be in accordance with the provisions of SI No.605 of 2017 - European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2017, as amended by SI 65 of 2018, in order to ensure that surface water and groundwater resources in the wider area are not polluted as a result of spreading activities.
- 8.4.4. Effluent storage, agricultural odours, noise and light from vehicles and machinery resulting from the proposed development, subsequent land spreading and general agricultural development are in my opinion entirely reasonable and consistent with the general agricultural nature of the area. Accordingly, the proposed development would not have an unreasonable impact on the amenities in the area.
- 8.4.5. The existing public road to the front of the site is narrow but in reasonably good condition at the time of the inspection. There are no public paths on this road and vulnerable users such as pedestrians would be expected to share the use of the public road with vehicles, including large agricultural related vehicles. The applicant has not applied for commercial development and in this regard I do not consider the proposal would unreasonably increase the number of vehicular movements and the nature and type of traffic to the site. The use of this public road and the site by agricultural vehicles and as applied for is appropriate and will not detract from the rural amenities.
- 8.4.6. The application proposes a slatted unit and machinery shed of 220 sq.m. It will be c. 80-110m set back from the public road on relatively flat lands. The drawings show the road level as TBM +10 and the proposed finished floor level of +9.15. The machinery shed shall be c. 5.0 m high and the slatted shed 4.77m high. The existing buildings are less than 10m from the public road with a mono-pitch roof to a maximum height of 3.241m. I consider the scale and siting of the proposed development would not detract from the visual amenity of the area.

8.4.7. The proposed development may be visible from the Wild Atlantic Way but this designation does not infer any planning policy or restrictions on development such as that proposed. The site is located within a 'Heritage Landscape' but is not located on an identified 'Scenic Route' as set out in the County Development Plan. Objective 13.5 of the CDP sets out requirements for Heritage Landscapes. The design and height of the proposed development is not considered excessive or out of character for such developments in the rural area. The proposed siting of the development is set back within the site and will be less visually prominent than the existing development from the adjoining public road. The site benefits from relatively flat topography and there is no vegetation of note to screen the development. Conditions 6 and 11 of the Planning Authorities decision require details of an earthen (sod and stone) embankment around the perimeter of the site and for the external finishes of the proposed structure to be finished in dark green both in the interest of visual amenity. Subject to similar conditions I am satisfied the proposed development generally complies with objective 13.5 of the County Development Plan and would not detract from the visual amenity of the area.

8.4.8. The red line application boundary does not include for all existing development along the public road such as the concrete apron and other hardstanding in situ. This part of the land is identified within the landholding of the applicant i.e. the blue line. The application is silent on remediation works to restore these lands to a more visually amenable condition appropriate to the rural area following the completion of the proposed development. In this regard should the Board decide to grant permission it is considered appropriate to apply a condition seeking a restoration plans for this part of the landholding to include an earthen embankment and landscaping and a timeframe for its implementation.

8.4.9. In conclusion, the proposed development would not detract from the visual, residential or rural amenities of property in the area and would be consistent with what can be reasonably expected from agricultural developments.

8.5. **Flooding**

8.5.1. The appellants has raised concerns relating to flooding at the application site referring to its bogland nature. They highlight ongoing works by the applicant to

provide drainage of the lands and have submitted photographs and videos of such drains and their outfall.

- 8.5.2. Having inspected the site I note the ground was soft under foot, wet in many places and drainage ditches were visible towards the rear of the site. The extent of these ditches have been detailed in the applicants submitted AA screening report. This also clearly details works carried out by the applicant to keep such drainage clear.
- 8.5.3. The Board are advised that Article 8(b) of the Planning and Development Regulations 2001 (as amended) provides general exempted development provisions as regards to works consisting of field drainage for agriculture purposes.
- 8.5.4. Having assessed flood mapping from the office of public works I am satisfied that the site of the proposed development is not in an area at risk of fluvial or coastal flooding. The appellants concerns would appear to be pluvial related as is evident by the wet conditions at the site, by drainage ditches in the area and the drainage works carried out by the applicant.
- 8.5.5. The applicants indicate in their response to the appeal that the site is predominantly underlain by soils from Namurian sandstone and shales with slow draining characteristics. This meets blanket peat on lands to the north and west of the landholding. Mapping is submitted from Biodiversity Ireland Mapping in support of this.
- 8.5.6. I note the concern of the appellants as regards to the development on boglands. I have reviewed the video and photograph submissions. I have also walked the site. The appellants have not submitted any evidence that the site is located on a bogland. The site and neighbouring lands suffer from very poor permeability as is evident by the wet nature of the lands but this does not mean it is bog. Furthermore the application site and the lands to the north and west (which the applicant suggest are peatlands as per the submitted subsoil mapping) are not identified as European Sites under the Habitats Directive. Connectivity to such sites will be discussed in section 8.6.
- 8.5.7. Having regard to above, I do not consider the proposed development will create increased flooding in the area. Notwithstanding this, it is also noted the provisions of SI No.605 of 2017 - European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2017, as amended by SI 65 of 2018 place separate restrictions

on agricultural developments including land spreading in relation to land susceptible to flooding and subsequent water pollution. The application site is subjected to such requirements in any event.

8.6. Appropriate Assessment

8.6.1. Introduction

a) Following a request for Further Information the applicant has submitted an Appropriate Assessment Screening Report which has been titled a 'Natura Impact Assessment Screening'. The report has been prepared by Mary Burke (Burke Environmental Services) and is 25/03/2021.

b) The report explains how impacts will be avoided-

'Appropriate compliance with best practice construction methodology and Good Agricultural Practice Regulations 2017. No change in drainage pattern, and no abstraction of groundwater liable to change water levels. These measures apply on all construction sites , irrespective of location, and are not mitigation measures specific to the site location.'

c) It concludes that-

'On the basis of objective information supplied in the application and consideration of up to date reports on the Natura 2000 site, and consideration of the developments in the area that significant effects can be excluded. No further assessment is required.'

8.6.2. Stage 1 Screening

a. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on European sites. 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 such European Sites.

8.6.3. **Observation of the Development Applications Unit 20/01/21**

- a. This prescribed body submission advised that the site is approximately 400 metres from two European Sites and the Planning Authority must ensure it is satisfied the proposed development will not impact the conservation objectives of the European sites, including water quality.

8.6.4. **The Proposed Development and Receiving Environment**

- a. The proposed development is for a 220 sq.m slatted unit and machinery shed. The proposal includes for the removal of 153.9 sq.m of existing sheds.
- b. Page 6 of the planning application form details the site benefits from water supply through an existing connection to a group water scheme. A letter of consent on file from the Breaffa South Group Water Scheme details the applicant has joined the scheme and is entitled to a connection. This part of the application form also details surface water disposal is to a watercourse.
- c. Page 11 of the application provides details of the Agricultural Development including the use of the structures is to secure machinery and control over cattle housing and slurry storage. Landholding is detailed as 5.15 ha with maps enclosed. The existing dungstead is to be replaced with a slurry tank of 75.9 m³ capacity. Page 11 details proposed animal stock of 26 cattle.
- d. The site is not located within a designated European site however it is c. 500m east of the Mid-Clare Coast SPA (004182) and the Carrowmore Point to Spanish Point and Islands SAC (001021) i.e. the nearest designated sites.
- e. The application site is agricultural in nature with an existing agricultural complex. There is an existing drainage ditch to the rear north western boundary and a narrow local road to the front south eastern boundary.

8.6.5. **European Sites**

- a. Given the rural location and existing agricultural nature of the site and surrounding areas, the nature and scale of the proposed development and the distance of European Sites from the application site, I consider the following designated sites as set out in Table 1 to be within the subject zone of influence –

Table 1-

Site Name & Code	Qualifying Interest / Special Conservation Interest	Distance
Carrowmore Point to Spanish Point and Islands SAC 001021	1150 Coastal lagoons 1170 Reefs 1220 Perennial vegetation of stony banks 7220 Petrifying springs with tufa formation (Cratoneurion)	c. 500 m to the west of the site.
Carrowmore Dunes SAC 002250 ¹	1014 Narrow-mouthed Whorl Snail <i>Vertigo angustior</i> 1170 Reefs 2110 Embryonic shifting dunes 2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)*	c. 10.5 km to the west of the site
Mid-Clare Coast SPA 004182	A017 Cormorant <i>Phalacrocorax carbo</i> A045 Barnacle Goose <i>Branta leucopsis</i> A137 Ringed Plover <i>Charadrius hiaticula</i> A144 Sanderling <i>Calidris alba</i> A148 Purple Sandpiper <i>Calidris maritima</i> A149 Dunlin <i>Calidris alpina</i> A169 Turnstone <i>Arenaria interpres</i> A999 Wetlands	c. 500 m to the west of the site.

- b. I am satisfied that other European sites proximate to the appeal site can be 'screened out' on the basis that significant impacts on such European sites could be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway to the appeal site.

8.6.6. Test of Likely Significant Effects

- a. The project is not directly connected to or necessary to the management of any European site. The proposed development is examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- b. Based on the source-pathway-receptor model and taking account of the characteristics of the proposed development in terms of its nature, location and the scale of works, the sites proximity to European sites and having

¹ The NPWS Conservation Objective Series details that this SAC overlaps with Mid-Clare Coast SPA (004182) and adjoins Carrowmore Point to Spanish Point and Islands SAC (001021) and that the conservation objectives for this site should be used in conjunction with those for the overlapping and adjacent sites as appropriate.

regard to the NIS carried out for the County Development Plan including the listed '*Conditions underpinning site integrity*' and implications for this site, the following issues are considered for examination in terms of likely significant effects on European sites-

- Potential for construction and operation related impacts on water quality at the site and on slurry spread lands as a result of inadequate waste treatment, discharge and pollution i.e. nutrient levels, water clarity, sediment levels, appropriate agricultural practices including grazing pressures etc.
- Potential for impacts on food supply, undisturbed roosting sites close to feeding areas, levels of disturbance from noise, lighting etc.

8.6.7. Potential Effects

Surface Water and Water Quality during proposed works and operations

- a. The submitted screening report identifies the Mid Clare Coast SPA and Carrowmore Point to Spanish Point SAC as within the catchment of the surface water drainage of both the application site and the spread lands associated with the applicants agricultural operations. Figure 1 and section 5.2.1 of the screening report detail the proposed excavation and construction works are located 50m from the surface water drain to the north of the site. The existing shed to be removed is located further away c.130m. In this regard I am satisfied the proposed works are sufficiently distant and best standard construction practice methodology and operations of the site will ensure there is no risk of pollution to the drainage ditch and on to European Sites.

Animal Effluent and Surface Water Quality

- b. The screening report details that farm management is underpinned on adequate collection of animal waste and appropriate distribution of the collected material. The report details that waste will be collected on site in the proposed slurry tank. Slurry is to be spread on 6 ha. of lands at Leaguard South c. 2km south west of application site. These are identified in Figures 3 and 4 of the report. Letters of consent to the applicant were submitted in response to the request for Further Information and are on file.

- c. The surface water stream from these lands and its connectivity to European Sites is shown in Figure 4. The screening report details that land spreading at this location exists and there will be no change in the volumes or use of these lands and therefore no change to water quality.
- d. Details of proposed stock numbers and nitrogen loading arising from the proposal are set out in Table 2 of the screening report. The development will in any event be subject to the requirements of the Good Agricultural Practise for the Protection of Waters Regulations 2017 and this can be addressed further by a condition if permission is granted.
- e. In this regard I am satisfied the proposed works and subsequent spreading of lands will not have an impact on water quality and subsequently the integrity of European Sites. The appropriate collection of waste on the site through the underground slurry tank (where none exists at present) will lead to improvements to the overall agricultural operation of the lands.

Disturbance

- f. The proximity of the site to the Mid Clare Coast SPA is noted and the Qualifying Interests are detailed in Table 1 above. The application site is currently in agricultural use and the application proposes no change. The development will require the demolition of the existing building on site and the construction of a new 220 sq.m slatted unit and machinery shed. These are considered small scale works.
- g. The appellant raises specific concerns about the impact of the development on the Curlew. The Curlew is not listed as a Qualifying Interest of the Mid Clare Coast SPA. I note it is a Qualifying Interest of the River Shannon and River Fergus Estuaries SPA 004077 c. 21km south of the site. Its conservation objective is to maintain the favourable conservation condition of Curlew in the River Shannon and River Fergus Estuaries SPA. Accordingly I am satisfied the proposed development is sufficiently distant and will not have a significant impact on that SPA.
- h. Having considered the existing structures on the site, the existing agricultural use and proposed use and associated operations of the site for the same purposes, the likely short term and minor nature of the proposed works I am satisfied the proposed development will not lead to significant disturbance

through works, noise, light pollution or other disturbance on the integrity of the identified European Sites and the Qualifying Interests of same.

8.6.8. **In-combination Impacts**

- a. The subject application is a minor agricultural development and can be considered as part of the wider development of the County as per the Clare Development Plan. The Plan was also subject to AA by the Local Authority.
- b. I do not consider there to be any other specific recent planning applications in the immediate area that could have in combination effects with the proposed development on the identified European Sites.

8.6.9. **Conclusion**

- a. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) would not be likely to have a significant effect on the following European Sites-

- Carrowmore Point to Spanish Point and Islands SAC 001021
- Carrowmore Dunes SAC 002250
- Mid-Clare Coast SPA 004182
- or any other European sites, in light of the sites' Conservation Objectives', and a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not therefore required.

In reaching this conclusion, I took no account of any specific 'mitigation measures' intended for this site to avoid or reduce the potentially harmful effects of the project on any European Sites.

9.0 **Recommendation**

- 9.1. I recommend that permission is granted subject to the following conditions-

10.0 Reasons and Considerations

Having regard to the established agricultural nature of the area, the scale and appearance of the proposed development, the nature of the receiving environment, the pattern of development in the vicinity and the provisions of the Clare County Development Plan 2017-2023, subject to compliance with the conditions set out below, it is considered that the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not have significant effects on the environment and would not be likely to have a significant effect on designated European Sites. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 30th day of March 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the development shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

3. A landscaping scheme and restoration plan for the site and landholding shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan and scheme shall include an earthen (sod and stone) embankment around the perimeter of the site and

proposals for the restoration of all the lands of the existing agricultural complex within the landholding i.e. removal all existing structures, containers, hard standing and concrete aprons etc. from the landholding. The developer shall commence implementation of the agreed site restoration plan upon completion of the proposed slatted unit and machinery shed, unless otherwise agreed in writing with the planning authority.

Reason: in the interest of orderly development and visual amenity.

4. The slatted shed shall be used only in strict accordance with a management schedule, which shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The management schedule shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017, as amended by SI 65 of 2018, and shall provide at least for the following:
 - a. Details of the number and types of animals to be housed.
 - b. The arrangements for the collection, storage and disposal of slurry
 - c. Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

Reason: In order to avoid pollution and to protect residential amenity.

5. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard-
 - a. uncontaminated surface water run-off shall be disposed of directly in a sealed system, and
 - b. all soiled waters shall be directed to a storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

Reason: In the interest of environmental protection and public health.

6. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended by SI 65 of 2018.

Reason: To ensure the satisfactory disposal of water material, in the interest of amenity, public health and to prevent pollution of watercourses.

7. A minimum of 18 weeks storage shall be provided in all underground storage tanks. Prior to the commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of environmental protection and public health.

Adrian Ormsby
Planning Inspector

31st of January 2022