



An
Bord
Pleanála

Inspector's Report ABP-311830-21

Development	Construct (i) overground effluent tower, and (ii) walled silage slab and all associated site works. Demolition of existing silage pit required.
Location	Killaghy, Mullinahone, Thurles, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	21/615
Applicant(s)	AEM Farms Ltd
Type of Application	Permission
Planning Authority Decision	Grant, subject to 4 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Joseph Power
Observer(s)	None
Date of Site Inspection	1 st September 2022
Inspector	Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 1.5ha is located adjacent to the R690 road to the east and to the north of Mullinahone village. The site has a relatively uniform topography. The site forms part of an established farmyard with an existing agricultural shed, associated yard and adjoining storage area. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

2.1. Permission was sought on the 5th May 2021 for the construction of (i) overground effluent tower (ii) walled silage slab and all associated site works. Demolition of existing silage pit required. The proposed gross floor space proposed is 655 sqm. The proposed gross floor area to be demolished is 250sqm.

2.2. Further information comprising the following as summarised was submitted on the 12th August 2021:

- A Natura Impact Study (NIS),
- An Archaeological Impact Assessment (AIA), and
- A Flood Risk Assessment (FRA)

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Tipperary County Council issued a notification to decision to grant permission subject to 4 no conditions summarised as follows:

1.	Compliance with plans and particulars submitted on 5 th May 2021 and 12 th August 2021.
2.	Surface Water

3.	Oxidisable and galvanised surfaces shall be painted a dark green matt colour
4.	Reuse and recycle rubble and demolition waste generated on site

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The **Case Officer** in their first report requested the submission of the following further information:

- A Natura Impact Study (NIS),
- An Archaeological Impact Assessment (AIA), and
- A Flood Risk Assessment (FRA)

3.2.3. The **Case Planner** in their second report and having considered the further information recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by Tipperary County Council reflects this recommendation.

3.2.4. Other Technical Reports

- **Department of Housing, Local Government, and Heritage** - Following receipt of further information, no further archaeological requirements requested.

3.3. Third Party Observations

3.3.1. There is one observation recorded on the planning file from Joseph Power. Issues raised relate to proximity to a national monument and hydrological connection to the Lower Suir SAC.

4.0 Planning History

4.1. There is no evidence of any previous appeal at this location.

5.0 Policy Context

5.1. National Planning Framework

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

5.2. Development Plan

- 5.2.1. The operative plan for the area is the **Tipperary County Development Plan 2022 – 2028**. Under this plan (CDP) the site is shown as lying within a rural area to the north of Mullinahone, a service centre settlement. This area lies within the architype known as the plains and in the landscape character type described as the River Suir Central Plain, which is largely composed of lowland pasture and arable lands that are deemed to have a high capacity/low sensitivity to agricultural development.
- 5.2.2. To the south of the site is Killaghy House, which is a protected structure, RPS ref. S086, under the CDP. This House is identified on the NIAH, ref. 22106001, and it is also identified in the National Monument Service's historic environment viewer as a castle – tower house (TS063-0270010) along with a bawn (TS063-027003-). The former is to be included in the next revision of the RMP.

5.3. Natural Heritage Designations

- 5.3.1. The site is not located within a designated Natura 2000 site. It is noted that the River Barrow and River Nore SAC (Site Code 002162) is 2.8km to the east of the appeal

site and that the Lower River Suir SAC (Site Code 002137) is located c3.3km to the south to the appeal site.

5.4. EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

The third party appeal has been prepared and submitted by Joseph Power of Heaney's Place, Heaney's Boreen, Kilmacthomas, Co. Waterford and may be summarised as follows:

- Attention is drawn to Section 4.1 of the NIS, which states "*no pathways for direct impacts as a result of the proposed construction works on any of the QI/SCIs of any European site were identified.*" By way of response, the appellant observes that the NIS does not consider any potential pathways whereby the land spreading of organic materials may negatively effect SCIs listed in the relevant SAC.
- How will the overground tank be monitored to ensure that any leaks are detected, and groundwater is protected?
- The storage tank is depicted as being open: how would ammonia emissions be addressed?
- Under the Draft Nitrates Action Programme, all new slurry tanks are to be covered from 1st January 2022: a cover should therefore be installed over the overground tank.
- No details of the size of the soakaway have been submitted or its supporting calculations under BRE 365.
- No details have been submitted of the capacity or otherwise of the tank in the cubicle shed to receive soiled water from the extended silage pit.

6.2. Applicant Response

6.2.1. The first party response to the appeal has been prepared and submitted by Agri Design & Planning Services and may be summarised as follows:

- The Nitrate Regulations have been revised to require that farmers have slurry storage facilities for 18 weeks rather than the 16 weeks that have pertained heretofore. This revision provides the impetus for the proposed overground effluent tower. The applicant does not propose any increase in the size of his dairy herd.
- Attention is drawn to the acceptance of the applicant's NIS by the Planning Authority.
- The proposed effluent tower would be funded by a Department of Agriculture Tam ii grant and so it will have to comply with all relevant regulations. This tower's design would incorporate double sluice gates, the second of which would be a safety gate. The effluent would be piped directly to an existing concrete tank and so leakage would not occur.
- The effluent tower would be provided with a cover to meet the aforementioned regulations.
- Clean water would emanate from the proposal only when the silage slab is empty. Such water would drain to an existing soakaway.
- The proposed silage slab would be funded by a Department of Agriculture Tam ii grant and so it will have to comply with all relevant regulations, too. Effluent from the silage slab would be stored in the proposed effluent tower, where there would be ample capacity for it.

6.2.2. The applicant also comments as follows:

- The protected structure is located on the southern side of the existing farm yard, whereas the proposal would be sited on its northern side, and so they would not correspond with one another.
- The AIA was informed by test trenches, which revealed no archaeology.

6.2.3. The applicant's Teagasc adviser (by way of letter attached to response) further elaborates on the need for the proposal as follows:

- The applicant's existing slurry storage has a surplus of just 3%, while, under this proposal, it would increase to 20%.
- The proposed effluent tower would be covered-in and so any issue of ammonia emissions would be addressed thereby.
- The proposal is needed to ensure compliance with new regulations.

6.3. Planning Authority Response

6.3.1. None

6.4. Observations

6.4.1. None

6.5. Further Responses

6.5.1. None

7.0 Assessment

7.1. This assessment is based on the plans and particulars submitted to the Planning Authority on the 5th May 2021 as amended by further plans and particulars submitted by way of further information the 12th August 2021.

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

- Principle
- Effluent Tower Cover
- Other Issues
- Appropriate Assessment

7.3. Principle

- 7.3.1. As documented permission is sought was sought for the construction of (i) overground effluent tower (ii) walled silage slab and all associated site works together with the demolition of an existing silage pit. The proposed gross floor space proposed is 655 sqm. The proposed gross floor area to be demolished is 250sqm.
- 7.3.2. Taking into consideration the established nature of farmyard activity at this location together with the predominance of agriculture in the area, I am satisfied that the continuance, improvement, and expansion of this agricultural activity is a realistic expectation. It is this context that that I consider the further development of agricultural structures in what appears to be a modernisation of an existing use in order to comply with prevailing farming practises to be an acceptable use in principle. Furthermore, I am satisfied that the scale, siting and design of the proposal is appropriate to its context and that it will not adversely dominate the rural landscape at this location, detract from the adjoining protected structure or injure the visual amenity of the area.

7.4. Effluent Tower Cover

- 7.4.1. Concern is raised that the storage tank would be open. I refer to the applicant's response to the appeal where it is stated that effluent tower would be provided with a cover to meet the relevant regulations. I am satisfied that no issue of ammonia emissions would arise as a result.

7.5. Other Issues

- 7.5.1. **Development Contributions** - I refer to the Tipperary County Council Development Contribution Scheme 2020. There are no exceptions that are applicable to this development. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

7.6. Appropriate Assessment

- 7.6.1. The appeal area does not extend into any European site and there are no proposals for works to any European Site. It is noted that there is a Natura Site c 2.8km to the east of the site. I refer to the Case Planners report of the Tipperary County Council and the NIS submitted by way of further information.

7.7. Stage 1 Screening for Appropriate Assessment

- 7.7.1. The site description and proposed development are set out in the NIS and also Section 1.0 of this report. The site is adjacent to the R690 road to the east and to the north of Mullinahone village. The site has a relatively uniform topography.
- 7.7.2. As stated, the appeal site is not located within a designated Natura 2000 site. Sites considered relevant to this appeal site are set out below:

Code	Site Name	Distance	Screening Conclusion
002162	River Barrow and River Nore SAC	2.8km	Screened out. No direct hydrological link and distance sufficient for no impacts due to works
002137	Lower River Suir SAC	3.3km	Screened in due to potential hydrological connection by reason of surface water flow and the source-pathway-receptor model

- 7.7.3. The River Barrow and River Nore SAC is excluded from further consideration and therefore screened out. The stream that flows through the site, flows directly into the Anner River, which is located circa 3.3km from the site. The Anner River forms part of the Lower River Suir SAC. Therefore, there is a direct hydrological link to the River Suir SAC. The site specific conservation objectives and qualifying interests for the SAC have been set for the site by the National Parks and Wildlife Service (NPWS). Details are summarised as follows

Habitat	Conservation Objective
Atlantic Salt Meadows	To restore the favourable conservation condition of Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) in Lower River Suir SAC, which is defined by the list of attributes and targets set out by the NPWS
Mediterranean Salt Meadows	To restore the favourable conservation condition of Mediterranean salt meadows (<i>Juncetalia maritimi</i>) in Lower River Suir SAC, which is defined by the list of attributes and targets set out by the NPWS
Floating River Vegetation	To maintain the favourable conservation condition of Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation in Lower River Suir SAC, which is defined by the list of attributes and targets set out by the NPWS
Hydrophilous Tall Herb Communities	To maintain the favourable conservation condition of Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels in Lower River Suir SAC, which is defined by the list of attributes and targets as set out by the NPWS
Old Oak Woodlands	To restore the favourable conservation condition of Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles in Lower River Suir SAC, which is defined by the list of attributes and targets as set out by the NPWS
Alluvial Forests	To restore the favourable conservation condition of Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)* in Lower River Suir SAC, which is defined by the list of attributes and targets as set out by the NPWS
Yew Woodlands	To restore the favourable conservation condition of <i>Taxus baccata</i> woods of the British Isles* in Lower River Suir SAC, which is defined by the list of attributes and targets as set out by the NPWS
Species	
Freshwater Pearl Mussel	To restore the favourable conservation condition of Freshwater Pearl Mussel in Lower River Suir SAC, which is

	defined by the list of attributes and targets as set out by the NPWS
White Calwed Crayfish	To maintain the favourable conservation condition of White-clawed Crayfish in Lower River Suir SAC, which is defined by the list of attributes and targets as set out by the NPWS
Sea Lamprey	To restore the favourable conservation condition of Sea Lamprey in Lower River Suir SAC, which is defined by the list of attributes and targets as set out by the NPWS
Brook Lamprey	To restore the favourable conservation condition of Brook Lamprey in Lower River Suir SAC, which is defined by the list of attributes and targets set out by the NPWS
River Lamprey	To restore the favourable conservation condition of River Lamprey in Lower River Suir SAC, which is defined by the list of attributes and targets as set out by the NPWS
Twaite Shad	To restore the favourable conservation condition of Twaite Shad in Lower River Suir SAC, which is defined by the list of attributes and targets as set out by the NPWS
Atlantic Salmon	To restore the favourable conservation condition of Atlantic Salmon in Lower River Suir SAC, which is defined by the list of attributes and targets as set by the NPWS
Otter	To maintain the favourable conservation condition of Otter in Lower River Suir SAC, which is defined by the list of attributes and targets as set ou by the NPWS

7.7.4. As stated above all of the proposed works take place outside the SAC and therefore there are no direct effects on the integrity of this European Sites. However, the proposed development has the potential to result in significant effects on the Lower River Suir SAC, with reference to construction or agricultural activities generating diffuse pollution to surface water pathways affecting water quality and habitats.

7.7.5. Following an evaluation of the relevant information, including details of proposed development and its relationship with European sites, it is not considered possible to rule out the potential for likely significant effects on the Lower River Suir SAC, in the absence of any mitigation measures, while applying the precautionary principle. Stage 2 Appropriate Assessment is therefore required.

7.8. Stage 2 Appropriate Assessment

- 7.8.1. The Screening process above and as part of the submitted documents (NIS) identified the potential for the proposed development to result in significant effects to the Lower River Suir SAC. A number of species have been identified which require to be brought forward for further consideration due to potential for adverse effects as a result of the proposed development in the absence of appropriate mitigation measures. These include Freshwater Pearl Mussel, White-clawed Crayfish and Otter that are identified as being within the vicinity of the site within the flow network of the Lower River Suir SAC. These qualifying interest features and the relevant attributes and targets that contribute to favourable conservation status are presented above.
- 7.8.2. The following impacts with potential to adversely affect the conservation objectives of the identified Natura 2000 sites were considered in the NIS
- Construction - Emissions from surface water resulting from the construction of the proposed construction work
 - Operational - Post farm operation from storm water emitted from down pipes and over constructed surfaces, pollution from animal effluent and land spreading.
- 7.8.3. The distance of the works from the River Suir corridor would preclude any direct effects which may adversely affect targets or attributes that support the conservation objectives for the Otter with respect to their conservation status. Emissions to surface water were identified as a potential indirect effect on the Qualifying interests of the Lower River Suir SAC as identified i.e., Freshwater Pearl Mussel and White-clawed Crayfish.
- 7.8.4. Mitigation measures to prevent possible impacts arising from the proposed project are summarised as follows:
- Earth works and concrete works will take place during periods of low rainfall to reduce run-off and potential siltation of watercourses
 - During construction of the agricultural construction works, good construction practises such as dust suppression on site roads and regular plant maintenance, will ensure minimal risk

- The weather forecast will be checked prior to the pouring of the concrete and no such works at any time when water levels that may cause inundation of the works area will be avoided. Concrete will not be poured at times when rain is predicted as this may lead to run off and over spillage.
- All plant and machinery will be serviced before being mobilised to site. No plant maintenance will be completed on site, any broken down plant will be removed from site to be fixed.
- Refuelling will be completed in a controlled manner using drip trays at all times.
- Fuel containers will be stored within a secondary containment system, e.g bunds for static tanks or a drip tray for mobile stores.
- Taps, nozzles or valves will be fitted with a lock system
- Fuel and oil stores including tanks and drums will be regularly inspected for leaks and signs of damage. Drip trays will be used for fixed or mobile plant such as pumps and generators in order to retain oil leaks and spills. Only designated trained operators will be authorised to refuel plant on site.
- Procedures and contingency plans will be set up to deal with emergency accidents or spills. An emergency spill kit with oil boom, absorbers etc will be kept on-site for use in the event of an accidental spill.
- Concrete (including waste and wash down) will be contained and managed appropriately to prevent pollution of watercourses. Pouring will occur in the dry, with appropriate curing times (48 hours) before re-flooding
- Mixer washings and excess concrete will not be discharged to water. If cement washings are to be discharged they will first be held in a treatment facility in order to neutralise the pH and to settle out solids.
- The contractor will assign a member of the staff as the environmental officer with the responsibility for ensuring the environmental measures prescribed are adhered to. A checklist will be filled in to show how the measures above have been complied with. Any environmental incidents or non-compliance issues will immediately be reported to Tipperary County Council and the EPA, and action taken. The construction works will be continuously monitored and all on-site staff will be fully briefed and aware of the environmental constraints and protection measures to be employed.

7.8.5. With regard to land spreading, I note that while functionally related to activities on site there is no geographical constraint to land spreading. The appeal does not include any specific detailed proposals for same. It is also the case that land spreading activity associated with the agricultural development could be changes over time. The management of effluent arising from agricultural activities and the undertaking of land-spreading is governed by the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2017. The applicant will also be required to construct the structure in accordance with the relevant Department of Agriculture, Food and the Marine (DAFM) specifications. I am satisfied therefore that the proposed development would not be likely to have any significant effects on the Lower River Suir SAC or any other designated site.

7.9. Cumulative Impacts

7.9.1. There are no significant developments in the vicinity detailed in the Tipperary County Development Plan. An application for a nearby piggery has been withdrawn. The upgrade for creamery in the vicinity was recently permitted. The NIS submitted with the creamery application has determined that there are not likely to be any significant effects of impacts on qualifying habitats or species on Natura 2000 sites which it is hydrologically connected. Tipperary County Council in partnership with Limerick City and County Council, TII and the Department of Transport are developing the N24 Cahir to Limerick junction to provide a bypass for Tipperary town. The work on this project is in the initial stages and therefore no cumulative effect on the proposed works are predicted. It is concluded that there will be no significant cumulative impact on the ecology of the area as a result of the proposed agricultural construction works.

7.10. Conclusion

7.10.1. I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Lower River Suir SAC or any other European site, in view of the site's Conservation Objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1. Having regard to the Tipperary County Development Plan 2022 – 2028, it is considered that, subject to compliance with the conditions set out below, the proposed development, would not seriously injure the residential or visual amenities of the area, or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

10.0 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 12 th day of August 2021 and by the further plans and particulars received by An Bord Pleanála, 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.	All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the proposed and existing storage facilities and no effluent or slurry shall

	<p>discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.</p> <p>Reason: In the interest of public health.</p>
3.	<p>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.</p> <p>Reason: To ensure the satisfactory disposal of waste material, in the interest of amenity, public health and to prevent pollution of watercourses.</p>
4.	<p>All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.</p> <p>Reason: In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.</p>
5.	<p>A minimum of 16 weeks storage shall be provided in the underground storage tank. Prior to 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.</p> <p>Reason: In the interest of environmental protection and public health.</p>
6.	<p>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:</p> <p>a) All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be</p>

	<p>allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.</p> <p>b) All effluent and soiled waters shall be directed to a storage tank.</p> <p>c) No effluent or slurry shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.</p> <p>d) Drainage details shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.</p> <p>Reason: In the interest of environmental protection and public health.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission</p>

Mary Crowley

Senior Planning Inspector

2nd August 2022