



An
Bord
Pleanála

Inspector's Report

ABP-312881-22

Development

Application for substitute consent for retention of slatted tank, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steel uprights at feeding area and all associated ancillary works and services. This application is accompanied by a remedial Natura Impact Statement (NIS).

Location

Grennan, Attanagh, Co. Laois

Planning Authority

Laois County Council

Applicant

Patrick Lalor

Type of Application

Substitute Consent

Observers

Eamonn & Jacinta Brennan
Friends of the Irish Environment
An Taisce

Date of Site Inspection

27th June 2023

Inspector

Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located in rural county Laois at Grennan, Attanagh, approximately 2.4km east of Durrow, 8km south of Abbeyleix and 5km to the south west of Ballinakill, where it is accessed off a local road that connects Attanagh with the N77 to the north of Durrow.
- 1.1.2. The access is via a private shared laneway which runs along the boundary of two other properties in addition to lands owned by the applicant. This laneway provides access to a dwelling and farmyard in separate ownership, adjoining the subject site. On the date of inspection the laneway appeared not to have been used in recent times to access the subject site.
- 1.1.3. The applicant Patrick Lawlor, lives at Ironmills, several kilometers away, on a separate residential farm. His son John, with whom he farms, lives a short distance away, on a recently purchased residential farm, fronting the local road to the south,.
- 1.1.4. It is stated on the file that the residence on the subject lands has not been lived in since the applicant's late uncle passed the lands to his nephew, more than a decade ago.
- 1.1.5. These three separate farm holdings, and other lands, including rented lands, are operated as one farm by a company by the name of Levamar Limited, herd number K1040787, based at Ironmills, Ballinakill.
- 1.1.6. The River Nore (SAC, SPA) flows in a north to south direction approximately 1km to the west of the site. The Owenbeg River, c.1.5km to the east, is also within the River Barrow and Nore SAC, and the River Nore SPA.
- 1.1.7. The site is a farmyard complex associated with dairy farming and comprises a collection of existing farm buildings. It includes a disused farm house and original stone-built farm buildings close to the end of the laneway. To the rear (west) of these buildings, there are a number of newer farm buildings, given as 708 sq.m in area. Adjoining and further west there is a large agricultural shed erected c.2016, which is the subject of this application.
- 1.1.8. To the east of the site is the appellants dwelling and farmyard.
- 1.1.9. The laneway is about 2.5m wide.

1.1.10. The site is given as 1.03ha.

2.0 Proposed Development

2.1.1. This is an application for substitute consent for:

Retention and completion of:

slatted tank, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steel uprights at feeding area and all associated ancillary works and services.

2.1.2. The proposed development is given as 1,266sq.m in area. The development was carried out in 2016/2017.

2.1.3. The application was accompanied by:

Planning Report by EPP (Emma Pillion Planning) Consulting,

Remedial Natura Impact Statement (NIS), by Whitehall Environmental,

Surface Water Management Plan by IE Consulting, and

Nutrient Management Plan. (NMP) by Michael J ryan.

2.1.4. The Planning Report, by Emma Pillion Planning, summarises the various reports submitted in support of the application. It includes:

Current Stock Numbers:

Animal type	Grennan	Ironmills	Total No. of animals
Dairy Cow	100	164	264
Cattle over 2 years	25	0	25
Cattle 1-2 years	0	85	85
Cattle 0-1 years	0	90	90
Total	125	339	464

The Lawlors switched from beef farming to dairy in 2017 and up to then had been out-wintering far higher livestock numbers on this farm. Total stock numbers from 2010 to 2021 are given in a table, which includes comments on rented land and land purchased. Numbers are stated to have risen from 520 in 2010 to a peak of 759 in 2015, falling to the current level. The comments column states that 51 acres of land was purchased and the farm converted from beef to dairy in 2017.

The report confirms that, in the past, the applicant did not need to export slurry and no organic manures have been or will be spread on SAC lands. The need to export slurry this year, is to comply with requirement to keep the stocking rate of the whole farm below 170kg org N/ha.

2.1.5. The Surface Water Management Plan by IE Consulting, includes:

Surface water run-off is from two sources - external hard-standing where livestock are present or trafficked, considered as soiled water; and roof water, and water from clean concrete yard areas where livestock is not present or trafficked, considered uncontaminated water. Runoff from soiled surfaces will be channelled to tanks and managed in accordance with the NMP. Roof water will discharge to a proposed soakpit, for which a design is given. Surface water runoff from clean concrete yard areas will discharge to ground via infiltration.

No surface water will discharge to a watercourse.

2.1.6. The Fertiliser Plan (also termed NMP) 2021, by Michael J Ryan, includes:

The plan is for all the lands.

As both yards have their own facilities, all calculations are the totals from both yards, based on the total number of cows to be milked. The manure pit is within a shed and seepage runs directly into a slurry tank. Stock are moved throughout the holding and between yards as required, and both premises are operated as a single unit under a single herd number. Slurry must be exported in order to remain below the 170 kg org N/ha whole farm stocking rate, which results in there being surplus slurry storage capacity on the holding.

As soil tests are not included, there is no chemical P assigned, that is, index 4 is assumed for all land. No organic manures are spread on SAC / Natura lands. There is adequate land available to apply all organic manures produced on this holding.

Stock numbers and spreading land ratio's interchange on most farms yearly. This particular holding is run as a single unit, under a single trading name, and a single herd identifier number; and is no different to most farms in adapting to the changes brought about as opportunities arise for stock and land additions, or removals/losses. There have been changes almost every year on this farm with stock numbers, land area and cropping regime undertaken, as the business reacts to the opportunities presented to it. Fertiliser plans are prepared by Mr Ryan's office on behalf of farmers to ensure all organic and chemical fertilisers and soiled surface water are applied to all appropriate lands within the Department of Agriculture's acceptable rates and legal limits.

Nutrient management plans are legally required to be amended within 7 days of any significant change in the farming business, to accurately reflect the current and planned farming practices. This usually happens when there is a significant change in stock numbers, land area being farmed, or a change in the cropping pattern on the land holding being farmed. This is a legal requirement under the Nitrates Regulations and is designed to ensure that the farmer concerned remains compliant with the provisions of the Nitrates Regulations, relating to having adequate housing and manure storage facilities, and adequate suitable land to spread these manures on, while remaining compliant with the maximum whole farm stocking rate permitted: 170 kgs org N/ha without a derogation.

It also outlines the maximum fertilisation rates for each plot and crop on the holding, both for organic and chemical fertiliser, as set out in the Nitrates Regulations. The applicant has adequate housing facilities for all the animals within his care. There are also adequate facilities for the storage of organic manures and for the storage of soiled water, as required under the Nitrates Regulations. The Nutrient Management Plan (NMP) deals with all the slurry produced by the entire farm holding, based on the 2021 land area, stocking rate (Dec 21), housing, soiled yards and holding tank facilities, at both yards, in 2021. It also deals with the requirements for the farm to remain compliant with the stocking rate provision of the Nitrates Regulations by specifying the amount of slurry to be exported in 2021. The plan now forms the basis of the 2022 planned farming operations and remains valid until a further significant business change occurs, when an updated plan may be required, at that point in

time. Under this 2021 NMP slurry was exported. This ensured that the whole farm stocking rate remained below 170kg org N (nitrogen)/ha as required.

Soil tests have been carried out but are not included in this report (as references to plots will become confusing). For this report they have taken the acceptable rate of Index 3 for Phosphorus (P) for all land farmed. This is perfectly legal and means that no P fertiliser above the indicated amounts may be applied on the holding. In the fertiliser recommendations he has recommended that no P chemical fertiliser be applied, thus assuming a P Index 4, by default. This assumption has no effect on the application of organic manures, as any holding may apply all organic manures produced on it, irrespective of the P status of the holding, even on P Index 4 soils in certain situations.

This plan demonstrates that the applicant does not need to spread organic manures on the SAC/ Natura lands and that the requirement to respect buffer zones, where required, is also independent of the rate of application of manures in the rest of the individual plots concerned. This arises as there is a significant export of slurry, related to the requirement to remain stocking rate compliant, in the absence of a Derogation, as the farm has more than 5% tillage area and thus is not permitted to apply for a Nitrates Derogation. Were there to be no tillage crops, then a derogation could be applied for, and the whole farm stocking rate could be raised to 250kg org N/ha; much higher than the current whole farm stocking rate before exports of slurry. Winter milking is confined to the yard at Ironmills only, in the interests of efficiency, as there are only 60 or so cows to be milked overwinter.

- 2.1.7. The remedial Natura Impact Statement (rNIS), prepared by Whitehall Environmental, Noreen McLoughlin MSc, includes:

Details:

The total land farmed (2021) is approx. 167.89ha, some of which is owned and some of which is rented.

There are two farmyards – one in Grenan townland, ie. the current application site, and one in Ironmills townland.

A Nutrient Management Plan was prepared for the entire farm in 2022. It presents data regarding the amount of slurry and farmyard manure produced on the farm,

including soiled water from hard surfaces, produced on the entire yard at Grenan and Ironmills, along with the land available for the spreading of this slurry.

A Nutrient Management Plan (NMP) is a legal requirement under the Nitrates Regulations and is designed to ensure that the farmer concerned remains compliant with the Nitrates Regulations re. having adequate housing and manure storage facilities, and adequate suitable land to spread these manures, while remaining compliant with the maximum whole farm stocking rate permitted; 170kgs Org N/ha without having a derogation. The NMP also outlines the maximum fertilisation rates for each plot and crop on the holding both for organic and chemical fertiliser as set out in the Nitrates Regulations.

The current whole farm stocking rate is 166.38kg/ha.

Slurry is exported from Ironmills only, not from Grennan. Slurry produced in the Grennan farm is applied to lands surrounding the farm. It is not transported up the lane towards the main road. A breakdown of slurry and soiled water is given.

Soiled water from the farm in Grennan is directed to existing tanks and is accounted for in the NMP.

Clean surface water from roof of the structure seeking substitute consent, falls off the roof onto the ground. Remedial work will be required to direct this clean water to a soakpit per BRE Digest 365 guidelines.

Land-spreading:

These are productive agricultural lands and have been subject to land-spreading in accordance with the relevant legislation and in accordance with the farm plans produced annually by the applicant.

S.I. 605 of 2017:

The European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2017) provides a basic set of measures to ensure the protection of waters, including drinking water sources, against pollution caused by nitrogen and phosphorus from agricultural sources, with the primary emphasis being on the management of livestock manures and other fertilisers. These measures are summarised in the rNIS.

Prior to its implementation, S.I. 605 of 2017 was subjected to AA (NIS) & SEA and was referred to as the fourth Nitrates Action Programme (NAP). The NIS for the Nitrates Action Programme identified that the existing and proposed measures would be predominantly positive for European sites.

The applicant is fully aware of his obligations under SI .605 of 2017 and will meet all the requirements under the Directive.

2.1.8. Water Features and Quality

The application site is located within the Nore Hydrometric Area Catchment and Sub-Catchment and the Owveg Sub-Basin. There are no drains or streams within or adjacent to the application site. There is a stream approximately 447m west of the application site. This stream flows southwards, until it meets the River Nore, at a point approximately 1.1km south-west of the application site. At its closest point, the River Nore is 954m south-west of the application site.

The EPA have defined the ecological status of the River Nore and its tributaries at points close to the application site, as good. Under the requirements of the Water Framework Directive this is satisfactory and must be maintained.

The site is within the Lisdowney groundwater body, classified as good status; the area is of high groundwater vulnerability.

2.1.9. AA screening (remedial)

European Site	Distance	Qualifying Interests	Potential for Impacts
River Barrow and Nore SAC 002162	743m west Spread-Lands Within / Adjacent and Hydrologically Linked	Freshwater pearl mussel (Vertigo moulinsiana) White-clawed crayfish Sea lamprey Brook lamprey River lamprey Allis shad Twaite shad Salmon Estuaries	Further consideration is required of potential direct and indirect impacts upon this SAC, its habitats and species arising from the application site, having regard to the close proximity of the SAC to the application site, and on the basis of the precautionary principal. Potential impacts may arise from inappropriate surface water management from the

		<p>Mudflats and sandflats not covered by seawater at low tide</p> <p>Salicornia and other annuals colonizing mud and sand</p> <p>(Spartina swards)</p> <p>Atlantic salt meadows</p> <p>Otter</p> <p>Mediterranean salt meadows</p> <p>Killarney fern</p> <p>Nore Pearl mussel</p> <p>(<i>Margaritifera durrovensis</i>)</p> <p>Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachium</i> vegetation</p> <p>European dry heaths</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</p> <p>Petrifying springs with tufa formation</p> <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in British Isles</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i></p>	<p>site and / or land spreading.</p> <p>This could have given rise to or could give rise to significant effects on the QIs of this SAC.</p>
River Nore SPA 004233	1.1km west / Spreadlands Adjacent and and Hydrologically Linked	Kingfisher	Further consideration is required of potential direct and indirect impacts upon this SPA, its habitats and species arising from the application site, given the close proximity of the SPA to

			the application site, and on the basis of the precautionary principal. Potential impacts may arise from inappropriate surface water management from the site and / or land spreading. This could have given rise to or could give rise to significant effects on the QIs of this SPA.
Lisbigney Bog SAC 000869	1.9km north-east	Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i> Desmoulin's Whorl Snail	No hydrological connectivity
Galmoy Fen SAC 001858	14.2km southwest	Alkaline fen	No hydrological connectivity
Cullahill Mountain SAC 000831	10.2km southwest	Semi-natural dry grasslands and scrubland facies on calcareous substrates (* important orchid sites)	No hydrological connectivity
Spahill and Clomantagh Hill SAC 00084	13.2km southwest	Semi-natural dry grasslands and scrubland facies on calcareous substrates (* important orchid sites)	No hydrological connectivity

2.1.10. Identification of Potential Impacts

- 1 Deterioration in water quality in designated areas arising from pollution, due to the initial construction of the unauthorised structures and continuation of farm activities within the application site itself. Inappropriate surface water management in the farm yard may lead to impacts on the River Nore and Barrow SAC and the River Nore SPA. Negative impacts on local groundwater

resources and subsequent effects on the Natura 2000 sites have also been considered.

- 2 Potential impacts on water quality within the River Barrow and Nore SAC / River Nore SPA arising from the use of organic manure produced on the farm in the past, present and future. Negative impacts on local groundwater resources and subsequent effects on the Natura 2000 sites have also been considered. These potential impacts would exist even in the absence of the shed seeking retention permission as they were present prior to the construction of the shed.

- 3 Cumulative impacts.

2.1.11. Assessment of Significance – the focus is on the protected habitats and species of the River Barrow and Nore SAC and the River Nore SPA. The application must proceed to AA.

2.1.12. AA (Remedial NIS)

SAC

The habitats within the SAC, close to the application site, include the River Barrow itself and its riparian grassland, woodland and treeline habitats. There is also a finger of broadleaved woodland extending south from the river towards the site and this woodland is 41m west of the site.

Site Specific Conservation Objectives (SSCO's)

The main target is to ensure that the habitats are stable or increasing in area and that the other attributes are maintained or restored. For the Annex II species of the SAC, the main attributes are population trend and distribution. The targets aim to ensure that the long term population trends of the species are stable or increasing and that there is no significant decrease in the numbers or range of areas used by the species, other than that occurring from natural patterns of variation.

2.1.13. Non-Relevant Qualifying Interests of the Site (screened out) are listed in Table 2 which also describes the reason for exclusion:

Allis shad, Desmoulin's Whorl Snail, Killarney Fern, Twaite shad, Sea lamprey, Atlantic salt meadows, Estuaries, European dry heaths, Mediterranean salt meadows, Mudflats and sandflats not covered by seawater at low tide, Old sessile

oak woods with Ilex and Blechnum in British Isles, Alluvial forests with Alnus glutinosa and Fraxinus excelsior, Petrifying springs with tufa formation, Salicornia and other annuals colonizing mud and sand, Spartina swards and Freshwater pearl mussel (Margaritifera margaritifera) (reason given: the habitat of Margaritifera margaritifera is acid/neutral waters which flow over non-calcareous rocks (Moorkins, 1999). While it remains listed as a feature of the River Barrow and River Nore SAC, this is being reviewed, as suitable conditions for this species don't occur within the lime rich Barrow / Nore catchments (NPWS, 2008, 2011)).

2.1.14. Qualifying interests screened in are listed in Table 3 sets which also describes the reason for inclusion.

2.1.15. The Site Specific Conservation Objective (SSCO's) for each is listed.

Potential Impacts

2.1.16. Potential impacts on the SAC include:

Pollution of water in the River Nore and its tributaries at points close to the application site arising from poor surface water management during construction and from ongoing operation of the farmyard and main access laneway from the public road;

Pollution of groundwater at points close to the farmyard due to inappropriate management of surface waters and farms structures during ongoing and future operation;

Pollution of surface water or groundwater arising from the land-spreading of the organic manure produced on the farm. This potential impact would exist regardless of the presence or absence of the shed seeking retention.

These impacts could subsequently give rise to significant effects upon the QIs which have been screened in. In the absence of mitigation, these significant effects may have arisen in the past, they may be ongoing and they may continue into the future.

SPA

2.1.17. The special conservation interest is Kingfisher. Other species occurring include Mute Swan, Mallard, Cormorant, Grey Heron, Moorhen, Snipe and Sand Martin

2.1.18. SSCO's have not been produced but the main target of this SPA would be to protect the numbers and habitats of the Kingfisher.

2.1.19. Records held by the National Biodiversity Data Centre for this species confirm its presence along the River Nore within the zone of influence of the application site and its spreadlands. Significant effects on this species (past, ongoing and future) must be considered further. The main threat would arise from deterioration in water quality from poor surface water management and inappropriate land-spreading. Deterioration in water quality may affect the ecological integrity of the River Nore and the food chain.

2.1.20. Summary of Potential Impacts

Impacts and effects have been considered on a temporal scale ie, those that might have occurred in the past, those that are currently on-going and those that could arise in the future.

- Deterioration in water quality in designated areas arising from pollution due to the initial construction of the unauthorised structures and the ongoing and continuation of farm activities within the application site itself. Inappropriate surface water management in the farm yard. Negative impacts on local groundwater resources and subsequent effects on Natura 2000 sites have also been considered.
- Potential impacts on water quality within the River Barrow and Nore SAC / River Nore SPA arising from the use of organic manure produced on the farm in the past, present and future. Negative impacts upon local groundwater resources and subsequent effects on the Natura 2000 sites have also been considered. These potential impacts would exist even in the absence of the shed seeking retention as they were present prior to construction of the shed.
- Cumulative impacts.

2.1.21. Deterioration in Water Quality in the SAC/SPA arising from the Initial Construction and subsequent Farmyard Operations:

During the construction of the unauthorised structure, silt, hydrocarbon or cement laden run-off from the construction area may have resulted in the pollution of local drains or watercourses, especially during periods of heavy rain. In addition, the

ongoing and continued operation of the farmyard and access lane could also potentially result in the run-off of contaminated surface water.

Possible impacts on the SAC/SPA include the pollution of watercourses with silt, oil, farmyard manure and slurry. These impacts could have arisen in the past, they could be currently on-going or they could continue to arise in the future. They could cause significant effects on the qualifying interest habitats of the SAC and SPA.

However, as there are no watercourses or drains within or adjacent to the application site that lead to the SAC/SPA, and having regard to the existing vegetated buffer zones that were always maintained around the shed, the source-pathway-receptor link between the application site itself and the SAC/SPA is weak and therefore the risk is considered to be insignificant. There is a drain along the northern edge of the access road, however, this is removed from the main area of construction works and therefore run-off into this drain during construction works would not have arisen.

All soiled water from the farmyard in Grennan is being directed to existing storage tanks until it can be spread under optimal climate conditions on lands surrounding the farm in Grennan. It is not exported from this area and its use does not generate additional traffic along the lane. The volume of soiled water generated in the yard has been accounted for in the current Nutrient Management Plan that has been prepared for the farm. The use of this soiled water for land spreading, in accordance with the Nitrates Directive, would not have any significant effect on the River Barrow and Nore SAC or the River Nore SPA.

Clean water from the roof of the shed requiring retention permission is falling to the ground around the shed currently. As this is clean, uncontaminated water, this would not have any impact on local surface or ground water receptors.

The application site was also assessed in terms of its groundwater vulnerability. An examination of the Groundwater Vulnerability maps produced by the Geological Survey of Ireland revealed that the farm yard is located within an area of high groundwater vulnerability. Areas of extreme groundwater vulnerability occur to the north, south and south-west of the site. Any structural weaknesses in the effluent tanks on the site, could lead to impacts upon groundwater in the locality.

Groundwater quality can impact upon surface water quality as these two resources mix at the hyporheic zone.

2.1.22. Land-spreading

The land-spreading of the organic manure produced at Grennan and Ironmills has been ongoing for many years, prior to the construction of the shed seeking retention, and it is not occurring specifically due to this development.

The land-spreading of the organic manure produced at the farm will occur on land within the Nore catchment, and the applicant has land-holdings within, adjacent and hydrologically connected to the SAC and SPA. General environmental impacts arising from inappropriate land-spreading of manure can lead to serious impacts on the receiving waters in local catchments and it can result in eutrophication, algal blooms, fish kills and loss of biodiversity. Designated habitats and species can be impacted and it can take years for the eco-system to recover.

In addition, land-spreading in areas of high or extreme vulnerability or where bedrock occurs at the surface can also result in pollution of groundwater and subsequently surface water resources. As the applicant has lands within areas that are of high – extreme vulnerability, it cannot be ruled out that land-spreading in these areas would not lead to direct or indirect impacts upon the River Barrow and Nore SAC, the River Nore SPA, their qualifying interests and the targets and attributes that are required to either maintain or restore these interests in good conservation condition.

2.1.23. In-Combination Effects

The potential for cumulative impacts arising from other significant existing or permitted infrastructure are assessed here. Cumulative impacts encompass the combined effects of multiple developments or activities, on a range of receptors. Potential cumulative impacts associated with the existing and permitted significant infrastructure within the same water catchments as the development should be considered.

As part of the Appropriate Assessment, in addition to the existing development, other relevant projects and plans in the region must also be considered. This step aims to identify, at this stage, any possible significant in-combination or cumulative effects / impacts of the works on the Natura 2000 sites with other such plans and projects.

Laois CDP is mentioned, and a list of planning permissions is provided and assessed. Any new application will be examined and the requirement for screening

for AA or NIS will be determined on a case by case basis to comply with the requirements of Article 6 of the Habitats Directive.

No significant in-combination effects are envisaged.

2.1.24. Mitigation measures

Mitigation measures are listed at 5.4 of the report.

Construction

For works previously carried out:

Measures potentially carried out during the initial construction works would have mitigated against the potential for significant impact effects on the River Barrow and River Nore SAC/SPA.

Works were undertaken within an existing area that has no surface water features on it and therefore no direct surface water connectivity between the area of construction works to the SAC/SPA. The site is 743m east of the SAC boundary. During the construction works on the shed, existing grassland habitats and hedgerows around and beyond the site boundary were retained, creating a natural buffer to prevent any run-off generated from the works mobilising to any significant distance beyond the site boundaries and preventing significant effects on the SAC/SPA.

The majority of the ground works were carried out in the summer of 2016, in dry weather, preventing run-off.

The construction of the shed allowed for soiled water, from the external hard core areas and feed areas surrounding it, to be directed into a slatted tank. The soiled water has been accounted for in the annual Nutrient Management Plans since, and spread in accordance with SI 605 of 2017.

Ongoing Measures and Additional Mitigation Measures which must be implemented:

It is recommended that visual inspection of farm structures is carried out to ensure that the external finishes are in compliance with Department specification.

A Surface Water Plan was prepared by IE Consulting Engineers. Surface water from external hardstanding areas is considered soiled; that from roof drainage is considered clean. Soiled water is being diverted to the existing slatted tanks and land spread. The volume has been accounted for in all calculations and spread rates

as part of the current NMP. There are gutters on the shed, but no downpipes. Remedial work will involve the addition of downpipes and the creation of a new soak pit to the north of the shed. The soakpit will provide appropriate attenuation and discharge to groundwater.

Operational Phase

For works and activities previously carried out:

Land-spreading and Farm Operation

The applicant was previously advised to avoid landbanks within the SAC/SPA: to exclude landbanks in Knockroe and Castlemarket. These landbanks were excluded in 2021 and in the years previous to this, since the works were completed. Use of remaining landbanks was in accordance with SI 605 of 2017. This would have minimised run-off into surface watercourses and protected groundwater resources.

Ongoing / Additional Mitigation Measures which should be implemented during continued operation of the farm.

A NMP has been prepared by a qualified agricultural advisor based on the current stocking rates of the entire farm holding.

This report details all lands available for receipt of slurry, including grasslands and tillage lands and the current whole farm stocking rate (166.38 kg/ha). These calculations consider the stock for the closed period and they also calculate the soiled water & slurry produced, along with the rate of slurry application.

The NMP notes that the applicant has adequate housing facilities for all animals in his care. There are adequate facilities for the storage of organic manures and for the storage of soiled water, as required under the Nitrates Regulations.

The NMP deals with all slurry produced by the entire farm holding based on the 2021 land area, stocking rate, housing, soiled yards and the holding tank facilities for both yards (Grennan and Ironmills) in 2021. It also deals with the requirements for the farm to remain compliant with the stocking rate provisions of the Nitrates Regulations, by specifying the amount of slurry to be exported in 2021, and the TB test numbers for 2021. This plan now forms the basis of the 2022 planned farming operations and remains valid until the new maps become available from the Department of Agriculture.

Under the 2021 NMP slurry was exported. This ensured that the whole farm stocking rate remained below 170kg org N/ha as required by law.

In addition, soil tests have been carried out and an acceptable rate of Index 3 for Phosphorus (P) for all land farmed has been taken. This means that no P fertiliser above the indicated amounts may be applied on the holding. The NMP has recommended that no P chemical fertiliser is applied, thus assuming P index 4 by default, which cannot lead to a breach of any rules concerning P fertiliser application. This assumption has no effect on the application of organic manures as any holding may apply all organic manures produced on it, irrespective of the P status of the holding; even P Index 4 soils in certain situations.

The NMP demonstrates that the applicant does not need to spread organic manures on any lands designated within the R Barrow and Nore SAC. The requirement to respect buffer zones, where required, is also independent of the rate of application of manures in the rest of the individual plots concerned. The limiting factor in the amount of organic manure to be spread is the availability of same, not the ability of the land to take the manure loading permitted, as there is a significant export of slurry related to the requirement to remain stocking rate compliant in the absence of a Derogation.

Were there to be no tillage crops, the whole farm stocking rate could be raised to 250kg org N/ha (following a derogation application), which is much higher than the current whole farm stocking rate before exports of slurry.

Land-Spreading Measures

In order to avoid any reductions in water quality within the catchment as a whole, all organic fertiliser must be used in accordance with S.I. 605 of 2017 European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2017). A list of measures, which should be implemented at the applicant's farm on an ongoing basis, is given.

Guidelines within the Department of Agriculture's Explanatory Handbook for Good Agricultural Practice Regulations, must be followed at all stages of the operation of the yard.

The applicant should liaise with National Parks and Wildlife Service in regards to the proper management of the callow habitats. It is recommended that in conjunction

with the NPWS, that the applicant participates in the NPWS Farm Plan Scheme (<https://www.npws.ie/farmers-and-landowners/schemes/npws-farm-plan-scheme>).

The applicant has land-holdings adjacent to a number of watercourses. The opportunity exists here for the creation of natural riparian buffer zones which will have positive impacts on biodiversity and water quality.

2.1.25. AA Conclusion

The mitigation measures are largely informed by the current Nutrient Management Plan, which considers that there will be no spreading within the SAC/SPA, that there is excess storage capacity within the farm for the volumes of manure produced, and that the whole farm stocking rate will be below 170kg/N/ha/yr. In addition, there is no direct surface water connectivity between the application site itself and the SAC/SPA, meaning that run-off from the construction and operation of the farm is not likely to have given rise to significant effects on the SAC/SPA. In addition all soiled water generated from the yard is being directed to storage tanks for spreading in accordance with SI 605 of 2017. It can be concluded in the light of best scientific knowledge, that there has not been, nor will there be, any significant effects on the River Barrow and Nore SAC / SPA or the QIs for which these sites have been designated.

3.0 Planning History

Grennan, Attanagh:

307832 application for leave to apply for substitute consent, granted by the Board.

Reg. Ref. 19/200 – Application for permission:

(1) To retain and complete as necessary for a slatted tank, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steel uprights at slatted feeding area; and all associated ancillary works and services;

(2) permission to cut back steel uprights at slatted feeding area;

(3) permission to construct new crush in collecting yard on site at Grennan, Attanagh, Co. Laois.

not determined by the Planning Authority on the basis that the application involved an element of retention and that it was considered to have required appropriate assessment and that therefore, under the provisions of s.34(12) of the Planning and Development Act, 2000 (as amended), the Planning Authority is precluded from considering the application:

It is noted that prior to making the above determination, the Planning Authority requested further information and commissioned an independent assessment of the requirement for appropriate assessment, undertaken by SLR Consulting.

Technical Review of Appropriate Assessment Reporting by SLR Consulting, includes:

It is considered that it is not possible to determine the likelihood of significant effects arising from the construction and operation of the development.

River Barrow and River Nore SAC and River Nore SPA are considered likely to be affected by land spreading activities and the significance of such effects is uncertain. Therefore, in line with the recommendations of guidance and case law it is considered that applicant should provide further detailed information to allow the development to be 'screened out' ie, allow Laois County Council to determine that significant effects are not likely, or alternatively the applicant should provide a Natura Impact Statement (NIS) for the development, to allow Laois County Council to carry out an appropriate assessment to determine if it will adversely affect the integrity of the River Barrow and River Nore SAC and River Nore SPA.

The project details do not sufficiently address the operational aspects of the proposed development particularly with respect to the spreading of slurry generated by the animals using the agricultural yard. CJEU joined cases C-293/17 and C-294/17 are referred to, and items 1 and 5 of the findings are quoted.

They list advice:

- 1) The applicant appears to rely heavily on the measures to protect the environment as set out in the NIS for SI 605 of 2017 in describing the development. This is contrary to cases C-293/17 and C-294/17.

- 2) Article 6 (3) and 6 (4) is hierarchical in nature; it is not sufficient or acceptable to rely on assessment and mitigation measures that were set out at plan stage assessment when considering lower level plans and /or projects.
- 3) All phases of the proposed development must be considered and addressed in full, irrespective of whether they occur within the planning application boundary, if those activities are directly linked to the functioning of the development.
- 4) Potential effects arising from emissions to air and water as a result of slurry spreading and increased stock levels should be addressed fully in any further information provided.
- 5) Protective (Mitigation) measures cannot be considered when screening for AA.
- 6) The location of activities such as spreading slurry should be clearly defined in landownership maps along with details of the soil type, percolation and capacity to retain and hold slurry without affecting the water table should also be addressed. This may require the services of professionals such as a hydrogeologist and soil scientist. The capacity of areas should be calculated, and it should be demonstrated that the combined capacity of the spread lands is sufficient to absorb the estimated amount of slurry likely to be generated.
- 7) If mitigation measures are required to address the concerns around effects to air, groundwater and surface water, then the project must progress to second stage AA and an appropriately experienced and qualified ecologist should prepare a NIS.
- 8) Mitigation measures must be site and project specific; their efficacy must be demonstrable; responsibility for implementing the measures must be clearly assigned, along with any procedures in case such measures fail.

Following receipt of further information SLR Consulting advised that reliance on mitigation measures set out in SI 605 of 2017 is contrary to case law and correct process. Mitigation measures must be site and project specific; their efficacy must be demonstrable; responsibility for implementing the measures must be clearly

assigned along with any procedures in case such measures fail. They concluded that Laois County Council had insufficient information to carry out AA.

300315-17 PA Reg. Ref. 17/218 – Permission refused by the Board on foot of a decision to grant by the Planning Authority; for development comprising the following:

retain and complete as necessary for a slatted tank, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steep uprights at slatted feeding area, and all associated ancillary works and services; permission to cut back steel uprights at slatted feeding area; permission to construct new crush in collecting yard at the southern side of the shed.

The refusal was for two reasons:

1 - relating to the serious negative impacts on residential amenity that would arise by reason of noise, traffic and odour and that the scale of structure proposed to be retained has not been adequately justified.

2 - that, on the basis of the information presented and in the absence of an appropriate assessment screening report, the Board cannot be satisfied that the proposed development would not be likely to have a significant effect on European sites, specifically the River Barrow and River Nore SAC (site code 002162) and the River Nore SPA (site code 004233) and that the Board is therefore precluded from granting permission.

PA Reg. Ref. 02/721 – Permission granted by the planning authority for the construction of livestock accommodation over existing slats.

The following planning enforcement history is referenced on the appeal file:

Warning letter issued by the Planning Authority on 17th October, 2016 requesting the cessation of any unauthorised works on the site.

UD Ref 16/76 - Enforcement notice issued on 7th March 2017 requiring the cessation of any unauthorised works and the demolition of any unauthorised structures. It is stated that the application for retention, ref. 17/218, was submitted on foot of this notice.

4.0 Policy and Legal Context

4.1. Development Plan

- 4.1.1. Laois County Development Plan 2021 – 2027 is the operative plan. Relevant provisions include:

RL 1 - Maintain a vibrant and healthy agricultural sector based on the principles of sustainable development whilst at the same time finding alternative employment in or close to rural areas to sustain rural communities.

RL 2 - Facilitate the development of agriculture while ensuring that natural waters, wildlife habitats and conservation areas are protected from pollution.

DM RL 1 – General Consideration for Agricultural Buildings, considerations are listed.

ES 17 – Implement the provisions of water pollution abatement measures in accordance with National and EU Directives and other legislative requirements in conjunction with other agencies as appropriate.

ES 18 - Maintain and improve the water quality in rivers and other water courses in the county, including ground waters. The Council will have cognizance of, where relevant, the EU's Common Implementation Strategy Guidance Document No. 20 and 36 which provide guidance on exemptions to the environmental objectives of the Water Framework Directive.

BHN 1 – 9 - Policy Objectives for Biodiversity and Designated Sites - to conserve and protect habitats and species listed in the annexes of the EU Habitats Directive and the Birds Directive.

4.2. Overview of Irelands Fifth Nitrates Action Programme

- 4.2.1. An Overview of Irelands Fifth Nitrates Action Programme, Government of Ireland, Department of Housing, Local Government & Heritage, March 2022. It includes:

Just over half of Ireland's monitored surface water bodies have satisfactory water quality. Agriculture is the most widespread and significant pressure impacting on the water environment. The key issues arising from agriculture are:

- excess nitrogen and phosphorus causing eutrophication;

- pesticides which impact on ecological health and on drinking water quality;
- excess fine sediment arising largely from erosion and runoff; and
- land drainage practices and other factors which impact physical habitat condition.

The most widespread issue is elevated nutrient concentrations which are present in a significant proportion of our water bodies, and the current trends are showing a continuous and sustained decline in water quality.

Nitrogen Issues - the most recent Water Quality Indicators Report published in July 2021 noted that nitrate concentrations are too high in many of our waters, particularly in the south and south east of the country, and trending in the wrong direction.

Nearly half of our river sites and one quarter of our groundwater sites have elevated nitrate concentrations. Our estuaries and coastal waters are particularly sensitive to high nitrogen concentrations. The key nitrogen indicators are as follows:

- Nearly half (47%) of river sites have unsatisfactory nitrate concentrations. Over one third (38%) of sites are showing an increasing nitrate trend for the period 2013-2020 while only 3% have a decreasing trend.
- Almost half (47%) of all groundwater sites had increasing nitrate concentrations for the period 2013-2020.
- There is a strong regional pattern in all waters that have excess nitrogen concentrations and increasing trends. The areas of greatest concern are the south and south east of the country.

The main sources of nitrogen from agricultural activities are organic manures and urine from livestock, and chemical fertiliser. The predominance of free draining soils in the south and southeast make these areas particularly susceptible to nitrate leaching. The vast majority of the nitrogen loads in these catchments come from agriculture and there is a strong relationship between farming intensity and nitrate concentrations in waters at the catchment scale. There is however, water quality variability within and between sub-catchments.

4.3. Catchments that need reductions in nitrogen concentrations

4.3.1. Assessment of the catchments that need reductions in nitrogen concentrations to achieve water quality objectives - WFD River Basin Management Plan – 3rd Cycle, EPA Catchments Unit, June 2021.

- There are a number of key catchments of concern with elevated nitrogen concentrations along the south, southeast and east coasts; listed rivers include the Nore & Barrow river catchments.
- Nitrogen concentrations in waters have been increasing since 2013. Between 2013 and 2019, all but one of the catchments of concern showed increasing trends in the amount, or load, of nitrogen discharging to the sea via rivers.
- The nitrogen load discharging to sea needs to be reduced in the catchments of concern, to support healthy aquatic ecosystems. The scale of reduction needed ranged from zero in some years, to just over 8,000 tonnes of nitrogen in the Barrow catchment in 2018.
- The data show that in the predominantly rural catchments, more than 85% of the sources of nitrogen in the catchment are from agriculture; from chemical and organic fertilisers.
- Maps have been developed of the critical source areas for nitrogen. These are the highest risk areas in the landscape where nitrogen from agriculture leaches to waters.
- Measures to reduce leaching should be targeted in the critical source areas, in the catchments of concern, to deliver maximum environmental benefits.

At the national scale, there is a broad relationship between the numbers of livestock on land, the amount of nitrogen fertiliser used, and nitrogen emissions in waters. At the local scale, the soils and the climate are also very important driving factors that dictate how much of the nitrogen used on land ends up in waters from any given farm, in any given year.

Targeting nitrogen measures - within catchments, the freely draining soils with higher intensity farming are the highest risk areas for nitrogen leaching from agriculture. As

soils and farming practice are highly variable across the Irish landscape, these areas are not evenly distributed.

The EPA has developed Pollution Impact Potential (PIP) maps, or critical source area maps, which combine the soils and the Department of Agriculture, Food and the Marine (DAFM) farm data to show, on a relative risk basis, where these hotspots, or critical source areas, are within the landscape. The critical source areas are the locations where the risk of nitrogen leaching occurring is the highest, and where the quickest response will likely be seen in the river, if measures are implemented. These maps can be used to target and prioritise actions in the catchments that need nitrogen reductions, and as a preventative measure in catchments that currently have satisfactory nitrogen concentrations. Some areas may need more actions than others depending on farm practices.

4.4. EPA Pollution Impact Potential Mapping

4.4.1. EPA have mapping under the heading Pressures & Activities include Pollution Impact Potential Mapping (PIP) for Nitrates and Phosphorus.

4.4.2. Pollution Impact Potential (PIP) & Targeting Agricultural Measures-mapping is available at:

<https://gis.epa.ie/EPAMaps/Water>, under the headings: 'pressures & activities', and 'taking action'.

4.4.3. Impact Potential for nitrate pollution and phosphorus pollution are shown (separately). The region in which the site is located is subject to potential nitrate impact and is identified as an area where targetted agricultural measures are required for nitrate losses.

4.4.4. The site is located in rank 1/2 for nitrate, rank 1 being the highest pressure.

4.5. Groundwater Protection Responses to the Landspreading of Organic Wastes

4.5.1. This document was produced by the DoELG/EPA/GSI and published by the department of the Environment and Local Government, in 1999, to guide the use of organic wastes by landspreading. It includes a response matrix which is re-produced

in the 2004 EPA document Landspreading of Organic Waste – Guidance on Groundwater Vulnerability Assessment.

4.6. **Legal Context**

4.7. CJEU Joined cases C-293/17 and C-294/17

- 4.7.1. The judgement includes that - Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 (Habitats Directive) on the conservation of natural habitats and of wild fauna and flora, must be interpreted as meaning that the grazing of cattle and the application of fertilisers on the surface of land or below its surface in the vicinity of Natura 2000 sites may be classified as a 'project' within the meaning of that provision, even if those activities, in so far as they are not a physical intervention in the natural surroundings, do not constitute a 'project' within the meaning of Article 1(2)(a) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

4.8. Sweetman v. EPA [2025] IECA 49

- 4.8.1. The EPA stated that no appropriate assessment (AA) was required for land spreading which was not part of the licence application. The court found in favour of the EPA.

4.9. **S.I. No. 113/2022 - European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022**

Known collectively as the GAP Regulations, the previous version which dated to 2017 is repealed.

4.10. **S.I. No. 393/2022 - European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2022**

This amendment implemented a derogation granted to Ireland in relation to nitrates, clarified Article 21 and included a provision for uncultivated land to support seed eating birds.

4.11. S.I. No. 716/2022 - European Union (Good Agricultural Practice for Protection of Waters) (Amendment) (No. 2) Regulations 2022

This amendment brought about changes to buffer strips, data sharing of livestock excretion rates, reporting dates and implementation dates which stem from the Common Agricultural Policy. A number of articles were clarified and definitions of poaching, grassland stocking rate and dairy cow were added.

4.12. S.I. No. 62/2023 - European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2023

This amendment changed the calculation of Nitrogen excretion rates as they relate to cattle¹ and the record keeping process.

4.12.1. These regulations give effect to Ireland's Nitrates Action Programme pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural source.

4.12.2. These Regulations, as amended, deal with storage facilities for effluent and soiled water (minimum capacity); periods when their application to land is prohibited; minimum distances from wells, rivers etc, to be adhered to in spreading; the manner of application (eg. not by upward-facing splashplate); keeping records of export to other named farmers; keeping records of use of chemical fertilisers; the duty of an occupier of land to prevent the application of fertilisers in excess of crop requirement (related to soil tests and stocking rates); and stocking rates (for grassland the total annual nitrogen (kg) excreted by grazing livestock averaged over the eligible grassland area (grazing and silage area)) stated in annual kg / nitrogen per hectare, prior to export. Soil tests are required for stocking rates above 130kg/N/ha and a P index of 4 is assumed, until soil tests are taken (16(3)(f)).

4.12.3. Derogation

¹ amends nutrient excretion rates for cows, based on milk yield.

4.12.4. The EU's Nitrates Directive permits the use of a maximum 170 kg of organic nitrogen per hectare. The Directive allows for a time limited derogation from these rules in certain circumstances (ie. on farms with at least 80 % grassland, in the context of the Irish Action Programme). At present, Ireland's derogation permits the use of up to 250 kg per hectare on derogation farms (derogation extended under Commission Implementing Decision (EU) 2022/696 on 29 April 2022). Ranging in size from small to large, all across the country, these more intensively stocked farms apply a range of additional measures beyond standard requirements to mitigate the risk to water quality. Ireland's current derogation is due to expire on 1 January 2026, and the derogation limit reduced to 220 kg/ha on 1 January 2024 in certain areas, because the latest water quality results have not shown sufficient improvement.

4.12.5. S.I. No. 113 of 2022 was subject to appropriate assessment.

4.13. A Natura Impact Statement, of Ireland's Fifth Nitrates Action Programme (NAP), was published 25th February 2022.

It includes:

acknowledging that the NAP is a high-level document and as such prediction of effects at individual European sites is not practical as the NAP lacks the necessary spatial detail to give context to the extent or significance of any potential effects. As such, the potential for effects is raised within the confines of the NAP with a view to appropriately informing lower levels of planning where the necessary spatial detail is available and identifying the mitigation measures that must be in place for lower tier plans and projects to ensure the protection of the European sites.

4.14. The Teagasc Soil Index System (referred to in the NMP).

4.14.1. In relation to Nitrogen (N) Teagasc state: there is, as yet, no useful Irish laboratory test for N in soils. Therefore, the nutrient N advice for grassland systems (grazing and conservation) depends mainly on land use and farming system, and particularly on the stocking rate.

4.15. Natural Heritage Designations

- 4.15.1. The River Barrow and Nore SAC and the River Nore SPA, c1km to the west and c.1.5km to the east of the subject site are the nearest Natura sites.

4.16. EIA Screening

- 4.16.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity 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.

5.0 Submissions and Responses

5.1. Planning Authority

- 5.1.1. The Planning Authority has made a submission on the application, including:
- The size and location are unchanged from the original planning application under Ref 19/200. At 1,266 sq m, it is large relative to existing agricultural sheds in the farmyard. However it is reflective of the general move towards larger integrated structures on Irish dairy farms post March 2015 when the EU milk quota system was abolished. In the recent past, Laois County Council has approved developments of both similar and much greater size and footprint. Examined in that context the proposed structure would not be regarded as overly big.
 - There is no statutory or required setback for agricultural development from a residential property in the planning legislation except related to exempted development. The structure is 113m from the third party residence, with intervening development presenting as a buffer.
 - The contents of the rNIS are noted.

5.2. **Applicant Response**

- 5.3. Emma Pillion Planning have responded on behalf of the applicant to the submission from Laois County Council, including:

Noting that Laois County Council consider the proposed development for retention 'reflective of the general move towards larger integrated structures on Irish dairy farms' and that they outlined 8 applications recently permitted in the county with greater size and footprint. They concur with the PA's statement that the separation from the third party is 110m; with existing farm, disused two storey farmhouse and appellants farmyard, operating as a dairy farm, providing a significant buffer.

6.0 **Observations**

- 6.1.1. Three observations on the application have been received.

6.1.2. **Eamonn & Jacinta Brennan**

- 6.1.3. Eamonn & Jacinta Brennan have made a submission, which includes:

They live up a small, narrow cul de sac which is c2.5m wide. Their family home and farmyard are at the top, 5m from the edge of the lane.

Pat Lalor has a right of way into the adjoining farm via their laneway. He purchased a farm adjoining his own in Grennan, which had a residential dwelling, animal housing, and an entrance off a main road. A roadway between this farmyard and dwelling, and the farmyard neighbouring the Brennan's was constructed. As far as the Brennans were aware most farm traffic was passing through this new way and very little was passing them.

There had been little traffic on the lane down through the years. This changed in summer 2016 with the construction work. There was no prior notification or planning notices.

Before the shed was built the 55ac farm was more or less self-contained. All silage was cut on farm and animals only left the farm for sale or slaughter.

They disagree with the traffic report submitted, and request the Board to review the logbooks they were advised to start compiling, of all traffic movements from late 2017 onwards.

They give the example of the milk collection, which required the lorry to visit their farm twice weekly (three visits during peak season: June and early July) and which now visits every second day. At peak times they may have to make a return visit on the same day to finalise collection from Pat Lalor's milking parlour.

Large tractor and trailer loads of cows are brought in every couple of weeks. There could be upwards of 40 movements, in and out, in one day.

The Brennans move cattle between their farm and rented land, comprising 4-5 journeys in March and the same again in November / December.

Other additional traffic movements include meal deliveries, slurry from out farms and large machinery. They consider that the farmyard is treated as some form of storage depot and find the noise indescribable.

They can hear horns blowing, rounding up the milking cows, from 4.30 am onwards.

They refer to virtually no traffic for the period of the noise monitoring, following heavy traffic during the previous week, and a resumption in traffic in the week following.

They refer to land which is shown shaded on the maps, which they state is used for growing maize and barley and which is subject to fertiliser application and slurry, with a main drain through, at a distance of 150m from the River Nore.

The disposal of rainwater has not been considered. There is an incline towards Brennan's house and they are concerned that the water flows towards them.

They question the need to import pig slurry and the effect that this large increase in animal waste will have on the natural environment.

They state that they have witnessed slurry being pumped out into surrounding fields using a simple generator and long pipe, to alleviate the pressure on storage in the new shed, during closed periods (Oct-Jan incl.); dates are given.

The spreading is not low emissions, a tanker and splash plate are used.

They state that the applicant is milking between 140-160 cows in Grennan; not as stated.

They state that they have attempted to resolve matters with the applicant. They wrote a letter suggesting that the applicant could construct an access lane off the existing lane, moving the heavy traffic a bit further from their front door. No response was made. They now think this was a bad idea, as this area floods.

They do not consider that the development should have passed the exceptionality test. They wish to see the application refused.

6.1.4. The observation is accompanied by documentation including:

A review of the Nutrient Management Plan by Phelan Advisory and Training Services.

Response to the rNIS by Dúlra is Dúchas Teoranta.

6.1.5. The Review of the Nutrient Management Plan by Phelan Advisory and Training Services includes:

The plan does not provide a lime report. No soil sample results have been provided despite being available. Ignoring soil pH levels and not making a recommendation for lime, where necessary, reduces nutrient use efficiency and puts environmental attributes at risk.

The fertiliser plan makes no allowance for any variation within the farm. The application rate of 1m³/ha on plot 1 is not technically feasible. Plot areas identified exceed the maximum areas permitted for single soil samples.

The increase in grassland stocking rate of 220 to 256 in the current year is a cause for concern and indicates increased environmental pressure.

Soil sample results are not provided. This is unacceptable.

The location of structures should be indicated on a farmyard sketch.

Maps of all lands farmed should be included as part of the NMP and should identify risk locations.

Concentrate feed usage is identified for 2020 as required for a 2021 NMP. The plan printed on 17/02/22 should have included 2021 concentrate feed usage, to be valid for 2022.

Cereal crop yields, where relevant, should have been included.

Plan notes should have been provided.

It is inadequate to comply with SI 113 of 2022.

6.1.6. The Response to the rNIS by Dúlra is Dúchas Teoranta (Dr Ní Bhroín), includes:

The rNIS is deficient in not addressing all 3 parts of the development.

The livestock units should be based on the standard unit of measurement where:

1 livestock unit is defined as: the grazing equivalent of an adult dairy cow producing 3000kg of milk annually without additional concentrated foodstuffs.

Calculating the livestock density for all units (based on a list of co-efficients) is used to determine the livestock density index, which is:

An indicator for the pressure of livestock farming on the environment.

Livestock, through manure production, contributes to climate change (greenhouse gas emissions) and nutrient leaching into water and air. A higher livestock density means that a higher amount of manure is available per ha of utilised agricultural area, which increases the risk of nutrient leaching. The actual impact on the environment of livestock farming is not only depending on the amount of livestock, but also depends on farming practices (Eurostat website).

In the absence of livestock units and details on the livestock density, no assessment of impact of the proposed development can be undertaken in the rNIS.

A list of omissions from the rNIS is given, and it is stated that uncertainty exists with the rNIS, which does not meet the standard of legal certainty required under the EU Habitats Directive, as the complete project was not adequately assessed.

Impacts on groundwater, on land designated with high groundwater vulnerability, or the impacts, direct, indirect or cumulative of a contaminated aquifer, on nearby Natura sites, have not been assessed. No site suitability data has been provided in the rNIS; which does not meet the standard of legal certainty.

A zone of impact is defined as pertaining to an assessment of the connectivity, atmospheric emissions, flight paths, ecological corridors etc; but a zone of influence has not been defined.

The rNIS does not identify the conservation aspect of the applicant's land within the SAC. The impact of the proposed development and associated activity cannot be properly assessed, as sufficient information has not been provided on SAC lands in the rNIS; which does not meet the standard of legal certainty required.

The rNIS only identifies 3 impacts.

Uncertainty remains in relation to spreading of inorganic fertiliser on the lands.

The NMP provides no soil sample data and no 'N' or 'P' values. There are no details on the current or proposed management of lands within the R Barrow and R Nore SAC. It was not subject to AA, is subject to change in the future at very short notice: 7 days; and no ecological limits have been placed on stocking rates on the land holding. The rNIS relies on the NMP with no future certainty regarding ecological impacts.

Listing potential cumulative impacts is not enough, interpretation of the data is needed. The cumulative impact of the proposed development, in combination with other developments locally, cannot be ruled out.

Information required as part of AA stages I and II, is listed. Where it is deemed that impacts exist, measures to mitigate should be provided.

The remedial NIS did not clearly identify the potential impact on the nearby Natura sites. It did not assess the direct, indirect and cumulative impacts of the proposed development either pre-construction, during construction, or post construction and does not meet the standard of legal certainty.

Mitigation – it is not enough to list measures, stating they should be carried out. Mitigation measures have to show with certainty that the proposed development will not impact on Natura sites and include a commitment to their implementation for the life of the project including the decommissioning phase.

The following should be documented in the rNIS:

- Identify any impact as a direct, indirect or cumulative impact, pre, during or post construction.

- Identify a mitigation measure or measures that will reduce or eliminate the impact of the proposed development.

The measure(s) proposed need to provide sufficient information and where needed include other expert reports to support the mitigation measures proposed.

How the effectiveness of the mitigation measure will be monitored and details of the response to any issues that may arise.

The rNIS has not provided with certainty that the proposed development and associated activity will not lead to:

1 An impact, direct or otherwise, on the conservation aspect of the lands designated within the River Barrow and River Nore SAC that currently are owned/rented and make up the land banks that will be used by the proposed development for land spreading of animal waste.

2 An impact on the aquatic environment of the River Barrow and River Nore SAC and River Nore SPA directly through land spreading or indirectly through contamination of groundwater at the proposed development site. No Nutrient Management Plan detailing livestock units, no surface management or storm water management plans, no Construction Management Plan, no Flood Risk Assessment and no Site Suitability Assessment, was referenced to support mitigation measures identified.

6.1.7. Friends of the Irish Environment

6.1.8. Friends of the Irish Environment have submitted an observation, which includes:

They are concerned that no public consultation was possible and no objections accepted, when the Board chose to permit an application for Substitute Consent.

The rNIS does not provide the necessary certainty and relies on mitigation which cannot be considered at this stage. Inadequacies in assessment methodology cast doubts on the effectiveness of mitigation measures, even if these are permitted as part of the assessment.

The ability to carry out an assessment of the environmental impacts has been substantially impaired.

They support the Dr Ni Bhroin (Dúlra is Dúchas Teoranta) report that:

The remedial NIS did not clearly identify the potential impact on the nearby Natura sites. It did not assess the direct, indirect and cumulative impacts of the proposed development either pre-construction, during construction, or post construction, and does not meet the standard of legal certainty.

The absence of important and essential details in the rNIS, will not enable the impacts on the nearby River Barrow and River Nore SAC and River Nore SPA to be properly assessed.

In the absence of details on the livestock density, no assessment of impact can be undertaken.

It has not been shown that the unauthorised development and continued farming activity will not adversely impact on both surface water and groundwater.

No site suitability data has been provided.

The freshwater pearl mussel is listed as a qualifying interest of the SAC. Restoration of favourable consideration status should be applied. The species should not have been screened out.

The Board accepts that exceptional circumstances must exist to justify the grant of consent, (per 308019). No exceptional circumstances exist in this case. The applicant had or reasonably did have a belief that the development was unauthorised (S177K (1)(b)) undermining Substitute Consent.

The inspector's report omits critical information in relation to the issue of unauthorised development.

The fact of a retention application does not alter the fact of the enforcement notice.

In these circumstances regularisation of this development would circumvent the objectives of the Habitats Directive and undermine Ireland's climate change targets.

The environmental arguments, the totally unacceptable commercial traffic disturbance to neighbouring residents, require a refusal on their own.

Necessary studies must be properly completed, and any further plans must ensure that the unacceptable location of the entrance is relocated, in the interest of proper planning and development.

6.1.9. **An Taisce**

6.1.10. An Taisce have submitted an observation, giving reference material, which includes:

They draw the Board's attention to CJEU Case C-261/18 (the Derrybrien case) and the judgement of the Supreme Court with regard to the requirement for exceptional circumstances to be established in cases where substitute consent is sought.

They submit that the definition of exceptional circumstances per section 177D(2) of the P&D Act 2000 as amended, and the definition used to establish exceptional circumstances in the subject case, and grant leave for a substitute consent application, is inconsistent with the views of the European Court on the thresholds for exceptional circumstances. They submit that ABP should seek a referral to the High Court.

Re. the rNIS

Hydrological Connection

The earlier reference to a drain, (Ref 19/200), which connects to the subject site via a pipe, and discharges to the Owenbeg River, part of the R Barrow and R Nore SAC SPA, differs to the statement that there are no hydrological connections to the SAC and SPA. This requires clarification.

Re. reliance on SI 605/2017 – the EPA data on the ongoing decline in water quality would appear to be indicative of the ongoing failure of the GAP (Good Agricultural Practice) Regulations implemented, and as relied upon by the applicant, to prevent water pollution. As reported by the EPA, nearly half of rivers (47%) and a third of lakes are failing to meet their environmental quality standards for nutrients with serious consequences for the health of Irish waters. 38% of river sites have increasing levels of nitrate pollution. The EPA highlights agriculture as a key cause of these problems. A number of rivers in the south and southeast are of particular concern; with the majority (85%) of the nitrogen coming from agriculture.

The EPA report is another clear indication that the water protection measures, currently in place under the Nitrates Directive, are failing to adequately protect our rivers, coast and groundwater from agricultural run-off. This is despite increased investment in this area, with the establishment of Agricultural Sustainability Support and Advisory Programme (ASSAP) and other measures to address this.

They refer to the EPA 'State of the Environment Report 2016' which highlighted that 'the national farm inspection regime is currently focused on the farmyard. However, a significant proportion of pollution can arise from agricultural lands. They separately noted that achieving successful WFD outcomes depends on having a site-specific, three dimensional, understanding of contaminant transfer pathways.

There has been no change in the GAP regulations. Compliance with GAP regulations is widely recognised to be low. The implementation of NMPs is also recognised to be highly inconsistent.

In the absence of adequate and robust compliance and enforcement, they submit that the GAP regulations cannot be relied upon to conclude beyond reasonable doubt that agricultural developments would not have significant adverse impacts on water based Natura 2000 sites.

The Board should ensure in the first instance, that sufficient evidence and data are provided to confirm full compliance with SI 605/2017, since commencement of the development for which substitute consent is sought. Even if such can be shown, sufficient doubt remains on whether or not the GAP regulations are sufficient for protecting water quality, such as to be relied on in the rNIS.

Pollution Impact Potential (PIP) - significant areas of land around the subject site and landspreading areas have high PIP sensitivities for Nitrogen.

Cumulative Impacts – only planning permissions for the past 5 years were referenced, although the unauthorised development took place in 2016. It did not consider other agricultural operations in the area, which are key to establishing beyond reasonable scientific doubt that the subject proposal has not caused, and will not cause, significant adverse impacts to the SAC / SPA.

Referring to a statement in the rNIS, they state that the requirement for all current and future planning applications to undergo AA, does not in and of itself guarantee that no adverse impacts will occur and contribute to cumulative impacts.

Per case C-258/22 – the Board must be satisfied beyond reasonable scientific doubt. No reasonable scientific doubt must remain. Paragraph 44 of the judgement is quoted.

Case: Kelly v ABP & Others (2013 no 802 JR), is referred to – the competent authority must use the best scientific knowledge in the field and must lay out the rationale and reasoning. Paragraph 40 of the judgement is quoted.

Re. the Water Framework Directive (WFD) – the River Nore is currently good status and this must be maintained.

There are two groundwater bodies: the Lisdowney groundwater body (GWB) directly underlying the site, and the Durrow GWB surrounding. The Lisdowney is of high vulnerability, currently good status; its' risk level is currently under review. The Durrow is a regionally important karstified aquifer of extreme vulnerability, currently poor status and 'at risk' of not meeting its WDF third cycle requirements. Groundwater in this area is particularly vulnerable to contamination from landspreading.

A full assessment of the application, against the requirements of Article 4 of the WFD, must be carried out to determine whether this development has caused or may cause a deterioration of the status of a surface or groundwater body, or if it may jeopardise the attainment of good surface or groundwater status or of good ecological potential and good chemical status.

C-461/13 -CJEU is quoted; related to the Water Framework Directive.

Ammonia – Ireland is in ongoing breach of its 116kt per annum limit under the National Emissions Ceiling Directive (2016/2284/EU), 99% of which is caused by agriculture. Ireland has been non-compliant for seven out of the last 10 years and is legally obliged to decrease its Ammonia Emissions to 107.5kt by 2030. Combined with PM 2.5, ammonia is harmful to health. It is a threat to biodiversity. Its impacts should be quantified and assessed.

7.0 Assessment

- 7.1.1. I consider that the main issues which arise in relation to this substitute consent application are, exceptional circumstances, appropriate assessment, groundwater protection, traffic impact and residential amenity, and other issues, and the following assessment is dealt with under those headings.

7.2. Exceptional Circumstances

- 7.2.1. The first matter which the Board must consider is whether or not exceptional circumstances under 177K(1J) of the Planning and Development Act, as amended, exist to allow the Board to grant permission, ie:
- (a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;
 - (b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;
 - (c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;
 - (d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;
 - (e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;
 - (f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;
 - (g) such other matters as the Board considers relevant.
- 7.2.2. Would regularisation of the development circumvent the purpose and objectives of the Environmental Impact Assessment Directive?

Having regard to the characteristics of the proposed development and of the area there is no real likelihood of significant effects on the environment arising from the proposed development, such as to require an environmental impact assessment (EIA). Carrying out the development did not, therefore, circumvent the purpose and objectives of the Environmental Impact Assessment Directive.

As regards whether regularisation of the development concerned would circumvent the purpose and objectives of the Habitats Directive, this application process requires the preparation of a remedial Natura Impact Statement, (rNIS). Such rNIS

must include any appropriate remedial or mitigation measures undertaken or proposed to be undertaken by the applicant for substitute consent to remedy or mitigate any significant effects on the environment or on the European site. This is addressed further under the heading Appropriate Assessment below. In my opinion the carrying out the development did not circumvent the purpose and objectives of the Habitats Directive.

- 7.2.3. Could the applicant reasonably have had a belief that the development was not unauthorised?

There is nothing on the file to indicate otherwise than that the applicant had or could reasonably have had a belief that the development was not unauthorised.

- 7.2.4. Has the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment, been substantially impaired?

In my opinion the ability to carry out an appropriate assessment and to provide for public participation in such an assessment has not been substantially impaired.

- 7.2.5. What are the actual or likely significant effects on the integrity of a European site resulting from the carrying out or continuation of the development?

- 7.2.6. These matters are addressed under the heading appropriate assessment below. They are not such as to indicate that exceptional circumstances do not exist in this case.

- 7.2.7. The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated is not such as to indicate that exceptional circumstances do not exist in this case.

- 7.2.8. There is nothing on the file to indicate that the applicant has not complied with previous planning permissions granted or has previously carried out an unauthorised development.

- 7.2.9. No other matters arise which the Board might consider relevant.

- 7.2.10. I am satisfied that exceptional circumstances exist to allow the Board to grant permission.

7.3. Appropriate Assessment

7.3.1. Appropriate Assessment

- 7.3.2. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority in this case, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment.

7.4. AA Screening Report and rNIS

- 7.4.1. To facilitate the Board in carrying out this function the applicant has submitted a Remedial Natura Impact Statement which includes a Screening Report.
- 7.4.2. The Board also has received observations including an observation from Eamonn & Jacinta Brennan accompanied by 'A review of the Nutrient Management Plan' by Phelan Advisory and Training Services, and 'Response to the rNIS' by Dúlra is Dúchas Teoranta, an observation from Friends of the Irish Environment, and an observation from An Taisce.
- 7.4.3. The issue of adequacy of information submitted with the application has been challenged in the observations.

Dúlra is Dúchas Teoranta in their Response to the rNIS on behalf of Eamonn & Jacinta Brennan, have referred in detail to the rNIS and state that uncertainty remains in relation to spreading of inorganic fertiliser on the lands; and that in the absence of livestock units and details on the livestock density no assessment of impact of the proposed development can be undertaken in the rNIS. They state, in relation to mitigation, that it is not enough to list measures; mitigation measures have to show with certainty that the proposed development will not impact on Natura sites and include a commitment to their implementation for the life of the project, including the decommissioning phase.

Phelan Advisory and Training Services, in their Review of the Nutrient Management Plan on behalf of Eamonn & Jacinta Brennan, state that the unavailability of soil samples is unacceptable; that the fertiliser plan makes no allowance for any variation

within the farm and that the application rate of 1m³/ha on plot 1 is not technically feasible; maps of all lands farmed should be included as part of the NMP and should identify risk locations. They consider that the information provided is inadequate to comply with SI 113 of 2022 and inadequate for appropriate assessment.

The Friends of the Irish Environment's observation states that, in the absence of details on livestock density, no assessment of impact can be undertaken. They state that the freshwater pearl mussel should not have been screened out.

An Taisce's observation refers to a drain which connects to the subject site via a pipe and discharges to the Owenbeg River, part of the R Barrow and R Nore SAC SPA. They state that the EPA data on the ongoing decline in water quality appears to indicate ongoing failure of the GAP Regulations, which are relied upon by the applicant, to prevent water pollution.

7.5. Description of Development

- 7.5.1. The proposed development described in paragraph 3.1 of the rNIS, is to retain and complete the slatted tank, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steel uprights at feeding area and all associated ancillary works and services. The operation is a dairy and beef farm on a total land holding of 189ha, owned and rented. Land required for slurry spreading (volume 973m³) is 42 ac; and for spreading of farmyard manure (FYM) (volume 233m³) is 42 ac. The land at Grennan comprises 106ac and is in excess of the area required for the proper use of the slurry and FYM produced on the farm.
- 7.5.2. The application site is located within the Nore Hydrometric Area, Catchment and Sub-Catchment and the Owveg Sub-Basin. A stream, approximately 447m west of the application site, flows southwards, until it meets the River Nore, at a point approximately 1.1km south-west of the application site. At its closest point, the River Nore is 954m south-west of the application site. (Associated lands are within the SAC). The site is part of a farm of 167.89ha. Effluent is landspread on the farm and is also exported from the farm to other lands for landspreading.
- 7.5.3. Natura Sites

7.5.4. The screening report considers sites within 15km. The screening summary of potential impacts on the identified sites, is given in tabular form:

European Site	Site Code	Relevant QI & SCI	Potential for Impact
River Barrow and Nore SAC	002162	<p>Estuaries</p> <p>Mudflats and sandflats not covered by seawater at low tide</p> <p>Salicornia and other annuals colonizing mud and sand</p> <p>Atlantic salt meadows</p> <p>Mediterranean salt meadows</p> <p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation</p> <p>European dry heaths</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</p> <p>Petrifying springs with tufa formation</p> <p>Old sessile oak woods with Ilex and Blechnum in British Isles</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior.</p> <p>Desmoulin's Whorl Snail Freshwater Pearl Mussel*</p> <p>White-clawed Crayfish</p> <p>Sea Lamprey</p> <p>Brook Lamprey</p> <p>River Lamprey</p> <p>Allis Shad</p> <p>Twaite Shad</p> <p>Salmon</p>	<p>743m west, 1.5km east straight line distance from site; spread-lands are within or adjacent and are hydrologically linked</p> <p>Potential impacts from: inappropriate surface water management at the site and / or land spreading of soiled water and effluent.</p> <p>This could have given rise to / or could give rise to significant effects on the QIs of this SAC.</p>

		<p>Otter</p> <p>Killarney Fern</p> <p>Nore Pearl Mussel (<i>Margaritifera durrovensis</i>)</p>	
River Nore SPA	004233	Kingfisher	<p>1km west, 1.6km east straight line distance from site; spread-lands are within or adjacent and are hydrologically linked.</p> <p>Potential impacts from:</p> <p>inappropriate surface water management at the site and / or</p> <p>land spreading of soiled water and effluent.</p> <p>This could have given rise to / or could give rise to significant effects on the SCIs of this SPA.</p>
Lisbigney Bog SAC	000869	<p>Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i></p> <p>Desmoulin's Whorl Snail</p>	<p>1.9km north-east of site.</p> <p>No hydrological connectivity. No potential impact</p>
Galmoy Fen SAC	001858	Alkaline Fen	<p>14.2 km south-west</p> <p>No hydrological connectivity. No potential impact</p>
Culahill Mountain SAC	000831	Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>)*important orchid sites	10.2 km south-west

			No hydrological connectivity. No potential impact
Spahill and Clomantagh Hill SAC	000849	Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia)*important orchid sites	No hydrological connectivity. No potential impact

*Freshwater Pearl Mussel - The status of the freshwater pearl mussel (*Margaritifera margaritifera*) as a qualifying Annex II species for the River Barrow and River Nore SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this species. (The Nore freshwater pearl mussel (*Margaritifera durrovensis*) remains a qualifying species for this SAC).

7.5.21. I accept, as set out in the submitted AA screening report statement, that the only sites requiring further consideration are the River Barrow and Nore SAC and the River Nore SPA

7.6. Screening Determination

7.6.1. Following the screening process, as it cannot be excluded on the basis of objective information that the proposed development, individually or in-combination with other plans or projects will have a significant effect on the following European sites:

- River Barrow and Nore SAC
- River Nore SPA

Appropriate Assessment is required. No additional sites other than those assessed in the NIS need to be brought forward for inclusion in the AA. Measures intended to reduce or avoid significant effects have not been considered in the screening process.

7.6.2. In relation to the screening out of qualifying interests and special conservation interests of the SAC, the applicant has screened out Freshwater pearl mussel (*Margaritifera margaritifera*). This is referred to by observers, who disagree with the screening out. The conservation objectives of the SAC include an explanation that the habitat of *Margaritifera margaritifera* is acid / neutral waters which flow over non-calcareous rocks. While it remains listed as a feature of the River Barrow and River Nore SAC, this is being reviewed as suitable conditions for this species don't occur

within the lime rich Barrow / Nore catchments'. For clarity it should be noted that the qualifying interests, Nore Pearl Mussel, is also a qualifying interest and has not been screened out in the AA screening report.

- 7.6.3. Of the other qualifying interests, those which are within the estuary are remote from the subject site. They have been screened out in the submitted AA screening report. As stated in the EPA report 'Assessment of the catchments that need reductions in nitrogen concentrations to achieve water quality objectives - WFD River Basin Management Plan – 3rd Cycle, EPA Catchments Unit, June 2021, 'nitrogen losses to waters are of particular concern because our estuaries are in the poorest condition overall, with only 38% meeting their water quality targets, and these waters are particularly sensitive to elevated nitrogen concentrations'. Trends in nitrogen concentrations in waters have been increasing since 2013, with the key catchments of concern being in the south and south east of the country. Although the subject development is small in the context of the overall size of the catchment, its contribution to cumulative impact, in the context of the proven impact of nitrate losses, requires consideration. These qualifying interests should, therefore, not be screened out.
- 7.6.4. I consider that all of the qualifying interests of the SAC should be brought forward for consideration to stage two AA.

7.7. Appropriate Assessment of implications of the proposed development

Remedial Natura Impact Statement

- 7.7.1. The application includes a remedial Natura Impact Statement (rNIS), which examines and assesses potential adverse effects of the proposed development on the following European Sites: River Barrow and Nore SAC and River Nore SPA.
- 7.7.2. Construction Phase Impacts
- Potential Indirect Impact
- 7.7.3. Pollution of water in the River Nore and its tributaries at points close to the application site arising from poor surface water management during construction and from ongoing operation of the farmyard and main access laneway from the public road;

- 7.7.4. Pollution of groundwater at points close to the farmyard due to inappropriate management of surface waters and farms structures during ongoing and future operation;
- 7.7.5. Pollution of surface water or groundwater arising from the land-spreading of the organic manure produced on the farm. This potential impact would exist regardless of the presence or absence of the shed seeking retention.
- 7.7.6. These impacts could subsequently give rise to significant effects upon the QIs which have been screened in. In the absence of mitigation, these significant effects may have arisen in the past, they may be ongoing and they may continue into the future.
- 7.7.7. These potential impacts would exist even in the absence of the shed seeking retention as they were present prior to construction of the shed.
- 7.7.8. SPA – re. Kingfisher the records held by the National Biodiversity Data Centre for this species confirm its presence along the River Nore within the Zone of Influence of the application site and its spreadlands. Significant effects on this species (past, ongoing and future) must be considered further. The main threat would arise from deterioration in water quality from poor surface water management and inappropriate land-spreading. Deterioration in water quality may affect the ecological integrity of the River Nore and the food chain.

Mitigation

- 7.7.9. The site of the proposed development is removed from protected sites, nevertheless there is potential for indirect effects on the qualifying interest and special conservation interests of the River Barrow and Nore SAC and River Nore SPA via groundwater/surface water. The mitigation proposed in the rNIS is that:
- there are no watercourses or drains within or adjacent to the application site that lead to the SAC/SPA,
 - the existing vegetated buffer zones that were always maintained around the shed prevented any run-off generated from the works mobilising to any significant distance beyond the site boundaries and prevented significant effects on the SAC/SPA,
 - the majority of the groundworks were carried out in the summer of 2016 in dry weather, preventing run-off,

- the construction of the shed allowed for soiled water from the external hard core areas and feed areas surrounding it, to be directed into a slatted tank,
- a drain along the northern edge of the access road is removed from the main area of construction works and therefore run-off into this drain during construction works would not have arisen.
- Landspreading carried out in accordance with the GAP regulations.

7.8. Assessment

7.8.1. Farmyard - The site of the proposed development is removed from protected sites nevertheless there is potential for indirect effects on the qualifying interest and special conservation interests of the River Barrow and Nore SAC and River Nore SPA via groundwater/surface water.

7.8.2. The NIS notes that the farmyard is located within an area of high groundwater vulnerability, and that areas of extreme groundwater vulnerability occur to the north, south and south-west of the site.

7.8.3. I accept the construction phase mitigation as set out in the rNIS.

7.8.4. The operational mitigation proposed in the rNIS is that:

Although the ongoing and continued operation of the farmyard and access lane could potentially result in the run-off of contaminated surface water; all soiled water from the farmyard in Grennan is being directed to existing storage tanks until it can be spread under optimal climate conditions on lands surrounding the farm in Grennan; it is not exported from this area and its use does not generate additional traffic along the lane; the volume of soiled water generated in the yard has been accounted for in the current Nutrient Management Plan that has been prepared for the farm.

7.8.5. The Board's Scientific Officer has examined the farmyard with reference to the Geological Survey of Ireland's (GSI) mapping and with reference to the well in the vicinity c120m and his recommendation is that a hydrogeological assessment should be requested. This is referred to under a separate heading (groundwater protection).

7.8.6. I consider that during the operational phase, the farmyard is not likely to impact on the conservation objectives of the SAC / SPA.

7.9. Landspreading

- 7.9.1. In the absence of mitigation there is potential for indirect impact on groundwater and surface water from landspreading associated with the proposed development and hence potential for significant indirect effects on protected downstream sites.
- 7.9.2. The rNIS notes that the land-spreading of the organic manure produced at the farm will occur on land within the Nore catchment, and the applicant has land-holdings within, adjacent and hydrologically connected to the SAC and SPA. It notes that general environmental impacts arising from inappropriate land-spreading of manure can lead to serious impacts upon the receiving waters in local catchments and it can result in eutrophication, algal blooms, fish kills and loss of biodiversity; designated habitats and species can be impacted upon and it can take years for the eco-system to recover; in addition, land-spreading in areas of high or extreme vulnerability or where bedrock occurs at the surface can also result in pollution of groundwater and subsequently surface water resources; as the applicant has lands within areas that are of high – extreme vulnerability, it cannot be ruled out that land-spreading in these areas would not lead to direct or indirect impacts upon the River Barrow and Nore SAC, the River Nore SPA, their qualifying interests and the targets and attributes that are required to either maintain or restore these interests in good conservation condition.
- 7.9.3. The mitigation proposed in the rNIS relies on the nutrient management plan (NMP) noting that the applicant has adequate housing facilities for all animals in his care; that there are adequate facilities for the storage of organic manures and for the storage of soiled water, as required under the Nitrates Regulations; and that landspreading will be in accordance with S.I. 605 of 2017 European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2017).
- 7.9.4. Landspreading of the organic manure produced at Grennan and Ironmills has been ongoing for many years, prior to the construction of the shed seeking retention and it is not occurring specifically due to this development.
- 7.9.5. Regarding the potential for impact from landspreading of soiled water and effluent, the applicant's rNIS and Nutrient Management Plan refer to the GAP regulations, now SI No 113 of 2022.

7.9.6. SI No 113 of 2022, is Ireland's Fifth Nitrates Action Programme (NAP). The Nutrient Action Programme was subject to appropriate assessment. The Natura Impact Statement, for SI No 113 of 2022, acknowledges that the NAP is a high-level document and as such prediction of effects at individual European sites is not practical as the NAP lacks the necessary spatial detail to give context to the extent or significance of any potential effects. As stated in the expert advice to the planning authority in relation to a previous application on this site, Reg. Ref. 19/200, the potential for effects is raised within the confines of the NAP with a view to appropriately informing lower levels of planning where the necessary spatial detail is available, and identifying the mitigation measures that must be in place for lower tier plans and projects to ensure the protection of the European sites.

7.9.7. The Natura Impact Statement, for SI No 113 of 2022 states:

in the absence of geographic specificity of measures contained within the NAP and given the strategic nature of the NAP, the focus has been on the broad intention of conservation objectives more so than site specific conservation objectives. The addition of detail at lower-level consenting or project-level tiers will be necessary to apply site specific conservation objectives to any effect.

any projects emerging from the delivery of the principles and priorities identified within the NAP will themselves be required to conform with the regulatory provision of Strategic Environmental Assessment (SEA), Environmental Impact Assessment (EIA), Appropriate Assessment (AA), Ecological Impact Assessment (EcIA), environmental risk assessments, and planning regulations/requirements.

7.9.8. Pollution Impact Potential (PIP) mapping has been prepared by the EPA for agricultural lands. These maps show that the site and surrounding area ranks highly for pollution impact potential for nitrate (rank 1 and rank 2: rank 1 being the highest risk level). EPA mapping for 'Targeting Agricultural Measures' indicates that the lands are in an area where targeted agricultural measures are required for nitrate losses.

7.9.9. The Board's Scientific Officer has examined the landspreading areas with reference to the Geological Survey of Ireland's (GSI) mapping. His report notes that many of

the landspreading areas overlies aquifers with extreme vulnerability where the 'Groundwater Protection Responses to the Landspreading of Organic Wastes' requires that the depth of soil should be established. In order to be suitable for landspreading, there should be a consistent minimum thickness of 1m of soil and subsoil over locally important and poor aquifers and a consistent minimum thickness of 2m of soil and subsoil over regionally important aquifers. An examination of soil conditions has not been carried out in this case. The advice is that within areas with a vulnerability rating of extreme, the applicant should be required to provide evidence of the suitability of the land for landspreading by way of a report from a hydrogeologist, containing maps and photographs of trial holes and their locations, demonstrating that a minimum of 2m thickness of subsoil exists above bedrock and / or watertable for regionally important aquifers and that a minimum of 1m thickness of subsoil exists above bedrock and / or watertable for locally important or poor aquifers. In the event that the required vertical separation cannot be demonstrated the applicant is required to remove the landbank from the proposed spreadlands.

- 7.9.10. That report is based on the information presented with the application, which included maps of some, but not all, landspreading lands. The issue of landspreading and its relationship with agricultural development was recently considered by the Court of Appeal.
- 7.9.11. The case, *Sweetman v. EPA* [2025] IECA 49, concerned the EPA's decision not to address landspreading associated with a licensed poultry farm. The court accepted that the IE license related to the site of the activity for which the license application was made and did not extend to the lands on which organic fertiliser may be used as a fertiliser. The EPA's argument that poultry litter and wash water are animal by-products and not a waste or emission was accepted. It was also accepted that their future use and regulation offsite are governed by the Animal By-Products Regulations, and if used as organic fertiliser, that use is covered by the GAP regulations and is not part of the license.
- 7.9.12. The Court of Appeal held that there was no "functional interdependence" between the intensive farming and the land-spreading, such that would require assessment of the environmental effects on the lands on which the material was spread.

7.9.13. The trial Judge's conclusions included that whilst it was "a matter of good administration" for the IE Licence to contemplate the future use of the manure in off-site landspreading by way of conditions, this did not amount to an authorisation of the land-spreading and the EPA was not obliged to fill this regulatory gap.

7.9.14. Taking account of the foregoing it appears to be the position that it is not necessary to examine the lands on which landspreading is intended to take place, as an indirect impact, on the basis that landspreading is addressed under the GAP regulations.

7.10. In-Combination Effects

7.10.1. Third parties state that cumulative impacts of the proposed development have not been considered.

7.10.2. The potential for cumulative impact would include other significant existing or permitted infrastructure including impact together of other intensive agricultural development within the catchment.

7.10.3. The Site Synopsis for the River Barrow and River Nore SAC, includes:

The main threats to the site and current damaging activities include high inputs of nutrients into the river system from agricultural run-off ... The water quality of the site remains vulnerable. Good quality water is necessary to maintain the populations of the Annex II animal species listed above. Good quality is dependent on controlling fertilisation of the grasslands, particularly along the Nore.

7.10.4. The concern regarding cumulative impact could arise if there was any concern regarding the suitability / capacity of available lands for the spreading of the farm effluent. The applicant states that there is sufficient lands available.

7.10.5. Following *Sweetman v. EPA* [2025] IECA 49, the position appears to be that, since landspreading is addressed under the GAP regulations, the cumulative impact of landspreading is not to be addressed by the Board.

7.11. Conclusion of Appropriate Assessment

7.11.1. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000 as amended.

- 7.11.2. Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that it would be likely to have a significant effect on European sites River Barrow and Nore SAC and River Nore SPA.
- 7.11.3. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.
- 7.11.4. Following an Appropriate Assessment, it has been determined that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site Nos 002162 or 004233, or any other European site, in view of the sites Conservation Objectives.
- 7.11.5. 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.

7.12. Groundwater Protection

- 7.12.1. As previously stated the site is in an area of high groundwater vulnerability. The Lisdowney GWB, directly underlying the site is of high vulnerability; the Durrow GWB which surrounds the Lisdowney, is a regionally important karstified aquifer of extreme vulnerability, currently poor status, and at risk of not meeting its Water Framework Directive third cycle requirements.
- 7.12.2. The Board's Scientific Officer has examined the farmyard with reference to the Geological Survey of Ireland's (GSI) mapping. His report notes that guidance issued by the Minister for Agriculture, Food and the Marine states that as a general guide, a storage facility for silage effluent / slurry / soiled water should be located not less than 50m from any waterbody in the case of new farmyards, and not less than 10m in the case of extensions/modifications to an existing facility. The minimum distance between a storage facility and a public / private water supply source, either surface or ground, should be 60m for new, 30m for existing farmyards subject to a hydrogeological survey, and up to 300m in vulnerable situations. A well is noted c120m from the slatted unit and the applicant would be expected to demonstrate, by hydrogeological assessment, that the development would not impact / has not impacted on any wells within 300m.

7.12.3. In my opinion the concern which arises in relation to a storage facility is the risk of leakage. Whether or not such a risk exists could be established by carrying out a leak detection test. This could be addressed either by further information or by condition.

7.13. Traffic Impact and Residential Amenity

7.13.1. The main objection to the proposed retention, under this heading, is the impact of traffic using the laneway, which runs in close proximity to the adjoining residential property.

7.13.2. The application provides details of noise impact, odour impact and traffic impact.

7.13.3. In relation to the impact from traffic, the statement made in the Brennan observation, which states that this is their laneway, is not accurate. The laneway serves both farms. There is likely to have been changes over the years to the nature of both farming enterprises and in each case some level of intensification of activity would likely be acceptable. The fact that there is currently no residential use of the dwelling on the subject farm, does not have a significant bearing on the nature of the traffic or the use of the laneway.

7.13.4. However, the concerns of the adjoining residential property owners are reasonable, as regards the change of use of the subject farmyard, from that which existed on the original farmholding, to being at the centre of a larger farming enterprise, multiple times the size of its former scale; and their related concern about traffic on the laneway.

7.13.5. Some alteration of the laneway, to provide a partial rerouting of traffic in the vicinity of the adjoining dwelling, was previously being discussed, having been suggested as a solution by the observers. They now wish all traffic to and from the adjoining farmyard to be diverted through the holding to the south, recently acquired by the applicant. That route includes a section which is a right of way through neighbouring lands.

7.13.6. The subject retention, includes the provision of an ancillary lane, to run alongside the existing laneway in the vicinity of the adjoining dwelling. It is not entirely clear what use the applicant would then make of the existing laneway, over which he would continue to enjoy a right of way. Nor is there a detailed design of the proposed

ancillary lane; which would be required to provide a sufficient buffer for the adjacent farm dwelling.

7.13.7. A parallel laneway would decrease the impact on the residence at the adjoining farm and I am satisfied that these are matters which could be addressed, either by additional information or by condition, and I do not think that residential amenity or the increase in traffic on the laneway should be reasons to refuse retention.

7.13.8. I agree with the planning authority that the existing farm buildings provide a buffer between the development and the adjoining residential property and I am satisfied that normal agricultural activity on the adjoining lands should not give rise to any unacceptable impact from noise or odour, such as to be unacceptable in this rural, agricultural area.

7.14. Other Issues

7.14.1. The neighbour refers to slurry being piped onto land as a means of clearing the tank and also to the use of pig slurry on the land.

7.14.2. If the Board is satisfied that compliance with the GAP regulations is sufficient for the protection of the environment, all landspreading is covered by these regulations and included in Nutrient Management Plans, in such circumstances concerns regarding importation or handling of slurry would not arise.

8.0 Recommendation

8.1.1. Having regard to the foregoing assessment it is considered that the proposed development should be granted for the following reasons and considerations, and in accordance with the following conditions.

9.0 Conditions

1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 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) Regulations 2022 (S.I. No. 393/2022) (as amended).

Where slurry or manure generated by the proposed development is moved to other locations, details of such movements are to be notified to the Department of Agriculture, Food & the Marine in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 (S.I. No. 393/2022) (as amended).

Where a slurry or manure is removed by a third party, by agreement, to be landspread elsewhere, details of such an agreement (to include name of third party, lands to be spread, amounts of material) should be furnished to the local authority in which said lands are located.

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

3 Within three months of the date of this consent, the applicant shall submit to the planning authority the results of a leakage test on the slatted tank, carried out to the satisfaction of the planning authority; use of the tank is conditional on the test successfully demonstrating that no leakage occurs.

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

4 Within three months of the date of this consent, the applicant shall submit to the planning authority detailed proposals for the provision of a driveway, parallel to the existing laneway, along that part of the laneway which is in the vicinity of the

adjoining dwelling, in order to provide for the partial re-routing of heavy goods vehicles traffic to the site. The details shall include screening to be provided between the new route and the existing laneway and the period for implementation.

Reason: In the interest of residential amenity.

5 The disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In this regard uncontaminated surface water run-off shall be disposed of directly in a sealed system to ground in appropriately sized soakaways. Details shall be submitted to and agreed in writing with the planning authority.

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

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Planning Inspector

18th March 2025

EIA Pre-Screening**[EIAR not submitted]**

An Bord Pleanála Case Reference	312881		
Proposed Development Summary	retention of slatted tank, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steel uprights at feeding area and all associated ancillary works and services.		
Development Address	Grennan, Attanagh Co. Laois.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	/	
	No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	/		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			

		Threshold	Comment (if relevant)	Conclusion
No	/	/		No EIAR or Preliminary Examination required
Yes		Class/Threshold.....		Proceed to Q.4

4. Has Schedule 7A information been submitted?			
No	/	Preliminary Examination required	
Yes		Screening Determination required	

Form 2 EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP- 312881
Proposed Development Summary	Retention and completion of: slatted tank, animal housing which incorporates cubicle area, calving boxes, milking parlour, dairy, office, plant room, slatted feeding area, collecting area, steel uprights at feeding area and all associated ancillary works and services.
Development Address	Grennan, Attanagh, Co Laois
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	There are no notable characteristics
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	The site is close to the River Nore and this is addressed under the heading Appropriate Assessment. The site is located in an area of high groundwater vulnerability and this is addressed under the heading 'groundwater protection'. No other environmental sensitivities are associated with the area in which the site is located.
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity,	The types and characteristics of potential impacts are those associated with agricultural development in this agricultural area and there are no other likely significant effects such as might arise under the headings: environmental parameters, magnitude and spatial extent, nature of impact,

duration, cumulative effects and opportunities for mitigation).		transboundary, intensity and complexity, duration, cumulative effects
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	Yes
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	No

Inspector:

Date:

Appendices:

Appendix 2 Photographs

Appendix 3 Laois County Development Plan 2021-2027, extracts.

Appendix 4 S123 document 'Bovine livestock Units and slatted units' Department of Agriculture, Food and the Marine, extracts.

Appendix 5 Protected Sites

Appendix 5 Extracts from GSI.ie mapping.

Appendix 6 Extracts from Catchments.ie mapping.

Appendix 7 An Overview of Irelands Fifth Nitrates Action Programme, Government of Ireland, Department of Housing, Local Government & Heritage, March 2022, extracts.

Appendix 8 Groundwater Protection Responses to the Landspreading of Organic Wastes, extracts.

Appendix 9 Specialist Report