



An
Bord
Pleanála

Inspector's Report ABP-314511-22

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| Development | Permission for alterations to existing development entrance off the R163. Retention permission for a top-soil berm, concrete pad, hard standing area, and a lime silo. |
| Location | Rossmeen, Kells, Co. Meath |
| Planning Authority | Meath County Council |
| Planning Authority Reg. Ref. | 22763 |
| Applicant(s) | Paddy Brady Agri Ltd. |
| Type of Application | Permission and Retention Permission. |
| Planning Authority Decision | Grant |
| Type of Appeal | Third Party |
| Appellant(s) | Fyanstown Community Group. |
| Observer(s) | None. |
| Date of Site Inspection | 24 th March 2023. |
| Inspector | Lucy Roche |

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1.0 Site Location and Description

- 1.1. The appeal site is in the rural townland of Rossmeen, off and to the north of the R163 Regional Road, c40m west of Fyanstown Bridge. The site is situated c5km east of Kells and c1km northwest of the rural node of Oristown. The main body of the site is set back c400m from the R163 and is served by a private laneway that also serves the adjoining agricultural lands which are shown to form part of the applicant's landholding. The existing entrance off the R163 is defined by a c 1.5m high stone wall to the east, hedging to the west and c1.6m of existing stone pillar on either side.
- 1.2. The main body of the site comprises a number of buildings including a large shed that is used for the storage of sludge / biosolid fertiliser, a machinery storage shed, a lime silo and a weighbridge and site office at the entrance to the yard. The site also encompasses a concrete yard to front (east) and side (north) of the sludge storage shed, an area (c4,581sqm) of hardcore to the north of the site, and an underground slatted storage tank to the rear (west) of the sludge storage shed. A topsoil berm is located along the eastern site boundary adjacent to the Moynalty river and to the north of the machinery shed. At the time of inspection, I observed various farm machinery and equipment stored /parked on site, mainly within the area of hard-core area to the north.
- 1.3. With respect to the site surrounds, the area is rural in character with agricultural fields in the immediate vicinity of the site. The closest dwelling is within the subject landholding and is located c. 270 metres south of the sludge storage shed. There are a number of one-off dwellings along the R163 to the southeast and west of the site with separation distances of over 350 metres from the sludge storage facility. The Moynalty River (Owenroe) runs directly along the eastern boundary of the site. The Moynalty River connects with the River Boyne and River Blackwater Special Area of Conservation and Special Protection Area c2km downstream of the site.
- 1.4. The site has a stated area of 1.12ha.

2.0 Proposed Development

- 2.1. Planning permission is sought for:

- The removal of 8m of piers and walls either side of the existing entrance along the R163.
- Installation of piers 2.5m from existing piers down the existing avenue /driveway; and
- Construction of a wall to the same height as the current wall which will adjoin the newly proposed piers and the wall along the R163.

2.2. Retention permission is sought for:

- The placing of topsoil berm with an area of 1,102m² at site perimeter. The topsoil berm is located along the eastern site boundary adjacent to the Moynalty river and to the north of the existing machine shed. The berm measures c105m in length, 10m in width and is shown to a maximum height of c2.0m.
- The pouring of concrete for the concrete pad with an area of 538m² and
- Placing of crushed rock for the creation of hard stand with an area of 4,581m².
- A lime silo: - This structure is located to the front (east) of the sludge storage building and is estimated to measure 7.8m in height.

2.3. Documentation provided with this application includes but is not limited to:

- Screening for Appropriate Assessment Report, Flynn Furney Environmental Consultants, (7th July 2021 (updated 30th May 2022))
- Environmental and Planning Report, Rowan (May 2022)

3.0 Planning Authority Decision

3.1. Decision

Meath County Council, by order dated 04/08/2022, decide to grant permission for the proposed development subject to 6no conditions. The conditions are generally of a standard nature, the following is noted:

- Condition 2: Requires compliance with conditions attached to the previous grants of permission KA120937 (ABP Ref: PL17.241695) and KA100736.
- Condition 3: Requires existing hedgerows, trees etc to be retained and the submission of a landscape plan.
- Condition 4: Relates to the provision of sightline distances and the entrance layout.
- Condition 5: Requires the development to be served by a SUDS compliant surface water design.
- Condition 6: Requires the applicant to submit full details including elevation drawings of the proposed entrance gates, walls, and piers – not exceeding 1.5m in height.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report of the case planner reflects the decision to grant permission. The report has regard to the locational context and planning history of the site, national and local planning policy, and the third-party submission and departmental reports received.
- Works proposed at the site entrance are acceptable in principle subject to minor design changes in terms of heights and materials and subject to conditions recommended by the Transportation Department.
- The proposed development is acceptable in terms of design siting and layout.
- The report raises no substantives issues with respect to water services (water supply and wastewater disposal). On the issues of surface water drainage, it is considered that the revised SUDS measures, requested by the Water Services Department may be addressed by way of condition.
- The proposed development as presented is considered acceptable from a flood risk perspective.
- In terms of EIA screening, the proposed development as presented is not listed in Schedule 5 and therefore mandatory EIA is not required. The

proposed development is significantly below the relevant threshold for agricultural development and will not by itself or in combination with other developments exceed the said threshold. Sub-threshold EIS is not required.

- On the issues of Appropriate Assessment, the planning authority concluded that the proposed development by itself or in combination with other plans and developments in the vicinity would not be likely to have a significant effect on European sites. Stage 2 Appropriate Assessment (NIS) is not required.
- The report concludes with a recommendation to grant permission subject to 6 conditions.

3.2.2. Other Technical Reports

Water Services: Requests further information – the submission of revised SUDS compliant surface water design for the proposed development.

Transportation: No objection subject to compliance with conditions.

Environment: No objection from a flood perspective

The development proposed, is shown (MCC Flood info mas) to be located within Flood Zone A and can be classified as a ‘less vulnerable development’. Regard is had to the site-specific flood risk assessment carried out under the previous application KA151141 which includes hydraulic modelling of the adjacent Moynalty River, and which determined that the watercourse has adequate hydraulic capacity to convey 1% AEP and 0.1% AEP flood events. Therefore, the proposed site is in Flood Zone C and at low risk of flooding.

3.3. Prescribed Bodies

Uisce Eireann: No objection subject to condition.

3.4. Third Party Observations

Meath County Council received one third party submission from the Fyanstown Community Group (the appellants in this case). The issues raised in the submission can be summarised as follows:

- The proposal amounts to an intensification of the operations on site and an intensification of the nuisance caused by sewage sludge and land spreading in the site's environs.
- The documents submitted do not provide sufficient information to allow the proposed development to be evaluated and assessed.

4.0 Planning History

4.1. Appeal Site

KA100736: Permission granted (2010) for agricultural shed of 885qm.

ABP PL 17.241695: MCC Ref. KA120937. Permission granted (2013) to retain change of use of an existing permitted agricultural shed to use as a unit for storage of sludge / bio solid fertiliser and retention of slatted shed. Permission granted by the Planning Authority. This decision was subject to a third-party appeal to An Bord Pleanála. An Bord Pleanála upheld the decision of Meath County Council and granted planning permission. The following conditions are of note:

Condition no. 2: Restricts the overall tonnage of sludge / biosolid fertiliser accepted at this facility to 3,000 tonne per annum and sourced from Meath County Council Wastewater Treatment Plants only.

Condition no. 3: Requires the storage of fertilisers and all land spreading activities to comply with SI610 of 2010 (Good Practice for the Protection of Waters) and Meath County Council's Protocol for the use of biosolids in Agriculture in County Meath.

Condition no. 4: Requires the applicant to enter into an agreement with the planning authority to ensure full compliance with the requirements of Section 5 of the Waste Management

(Registration of Sewage Sludge Facility) Regulations 2010 (S.I. 32 of 2010).

Condition no. 5: Restricts the acceptance and dispatch of material to/from the subject site shall only be between 08.00 and 18.00 on Monday to Friday, and 08.00 to 12.00 on Saturdays.

KA151141: Permission **refused** (2016) for an extension (664 sq.m) to existing agricultural shed used for storage of sludge / bio solid fertiliser and the construction of an over ground slurry / industrial sludge storage tank (capacity of 931 cubic metres) and associated works. Permission also sought to amend terms of condition no. 2 (a) and 2 (b) of permission granted under ABP Ref. PL17.24169 and to retain a lime silo. Permission refused by reason of: *The increase in traffic numbers and turning movements at the junction of the site and the R163 would endanger public safety by reason of traffic hazard and would be contrary to RD POL 38 and RD POL 39 of the Development Plan, which relate to traffic hazard and unnecessary access onto roads of regional or local importance.*

ABP PL17.249303: (MCC Ref: KA170281) Permission **refused** (2017) for 664sq.m extension to agricultural shed used for storage of sludge / biosolids, construction of a slurry / industrial storage tank; to retain a lime silo and to amend Condition no. 2 of PL17.241695 - to increase the overall tonnage of sludge biosolid fertiliser accepted at the site from 3,000 tonnes per annum to 15,000 tonnes per annum and to allow municipal waste water treatment sludge / biosolid fertiliser to be accepted from all counties in Ireland, as opposed to County Meath only. Permission was **refused** for three reasons as follows:

1. *The Board is not satisfied on the basis of the information submitted with the application and appeal that there is adequate provision within the site for the storage of effluent arising from the proposed development and that all effluent will be sufficiently contained within the site. The use of the structures and site for the storage of sludge/biosolids would therefore give rise to a risk of environmental pollution and be prejudicial to public health.*

2. *It is considered that insufficient information has been submitted with the planning application detailing the methods involved in the treatment of sludge on site. The Board is not satisfied that adequate detail has been submitted in relation to the storage of lime and the use of a mobile mixing unit on the site. In the absence of such details, it is considered that the use of the site for the storage and treatment of sludge/biosolids is prejudicial to public health.*
3. *On the basis of the information provided with the application and appeal and the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans and projects would not be likely to have a significant effect on the River Boyne and Blackwater SAC (Site Code: 002299) and the River Boyne and River Blackwater SPA (Site Code:004232), in view of the site's conservation objectives. In such circumstances the Board is precluded from granting retention of planning permission for the facility in question.*

KAS52136: Application for a Section 5 Declaration (2021) on the question: *Whether or not the placing of the topsoil berm at site perimeter, the pouring of concrete for concrete pad and placing of crushed rock for the creation of a hard stand, is or is not exempted development.*

A decision was made by Meath County Council on the 5th of August 2021 stating that this is a development which would require planning permission.

Note: In addition to the above it is noted that the applicant, in association with others, has in recent years (2021) made a number of incomplete applications to Meath County Council (Ref. No's: 21/143; 21/476 and 21/545) for development of an anaerobic digestion facility at this site.

4.2. **Other**

ABP:PL17.245707: Retention **refused** (2016) for the use of two agricultural storage sheds for storage of sludge/biosolids at Fyanstown, Kells, County Meath. (c600m to the south of the appeal site, on the opposite side of road). Permission was refused for the following reasons: (1) agricultural sheds not suitable for the storage etc of

sludge/biosolids; (2) insufficient information re. the methods for the treatment of sludge; (3) cumulative impacts (4) absence of NIS.

MCC Ref: 22/331: ABP Ref: 315173-22 - Permission is sought for the construction of a reinforcement buttress to the extant embankment walls of the Tailings Storage Facility c6.5km southeast of the appeal site. An Environmental Report and a Natura Impact Statement (NIS) were received with this application.
Note: This application is referenced in the appeal.

5.0 Policy Context

5.1. Development Plan

5.1.1. The Meath County Development Plan 2021- 2027 is the operative plan for the area.

5.1.2. The site is located in the rural area (RU) the objective of which is ‘*To protect and promote in a balanced way, the development of agriculture, forestry and sustainable rural-related enterprise, community facilities, biodiversity, the rural landscape, and the built and cultural heritage*’. The guidance for this area states that the primary objective is to protect and promote the value and future sustainability of rural areas. Agriculture, forestry, tourism, and rural related resource enterprises will be employed for the benefit of the local and wider population. A balanced approach involving the protection and promotion of rural biodiversity, promotion of the integrity of the landscape, and enhancement of the built and cultural heritage will be adopted.

5.1.3. Landscape:

| Table 5.1 Landscape Character Type | |
|------------------------------------|-------------------------|
| Character Area | LC20- Blackwater Valley |
| Value | Very High |
| Sensitivity | High |
| Importance | Regional |

5.1.4. Chapter 4 - Section 4.11.1 Rural Enterprise

ED POL 26: Meath County Council shall positively consider and assess development proposals for the expansion of existing authorised industrial or business enterprises in the countryside where the resultant development does not negatively impact on the character and amenity of the surrounding area. In all instances, it should be demonstrated that the proposal would not generate traffic of a type and amount inappropriate for the standard of the access roads. This policy shall not apply to the National Road Network

5.1.5. Chapter 9 - Section 9.1 Rural Development context

RUR DEV SO 9 To ensure that plans and projects associated with rural development will be subject to an Appropriate Assessment Screening and those plans or projects which could, either individually or in-combination with other plans and projects, have a significant effect on a Natura 2000 site (or sites) undergo a full Appropriate Assessment

RUR DEV SO 10: To promote rural economic development by recognising the need to advance the long term sustainable social and environmental development of rural areas and encouraging economic diversification and facilitating growth of rural enterprises.

5.2. **Other:**

- Uisce Eireann - National Wastewater Sludge Management Plan, 2016

5.3. **Natural Heritage Designations**

The subject site is not located on nor is it directly adjacent to any designated site. The River Boyne and River Blackwater SAC (Site Code: 002299) and the River Boyne and River Blackwater SPA (Site Code:004232) are both located c1.3km to the

south of the site. The Owenroe / Moynalty River runs directly along the eastern boundary of the site and connects with the River Boyne and River Blackwater SPA and SAC c1.7km to the south.

5.4. EIA Screening

Schedule 5 of the Planning and Development Regulations, 2001 (as amended), sets out Annex I and Annex II projects which mandatorily require an EIS. Parts 1 & 2 of Schedule 5 outline classes of development that require EIS corresponding to Annex I and Annex II. The proposed development, comprising alterations to the existing development entrance off the R163 and the retention of a top-soil berm, concrete pad, hard standing area, and lime silo, does not fall within a class of development listed under Part 1 or 2 of Schedule 5 and does not therefore require EIA. This matter is considered further in the Section 7.4 below.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal lodged on behalf of the members of the Fyanstown Community Group against the decision of Meath County Council to grant permission for development at Rossmeen, Kells, Co. Meath. The grounds of appeal have been set out under various headings and can be summarised as follows:

The Construction of the Application:

- The site notice was not erected for the requisite period of 5 weeks as required under Article 20 of the Planning and Development Regulations (as amended).
- The newspaper notice does not comply with the requirements of the regulations as it does not state the purpose of the development or indicate that the site is associated with a Waste Collection Permit.
- The content of the application does not accord with Article 22(4) of the P&D Regulations. The business is of a commercial nature and the applicant has not explained the need for the additional paved area.

The Screening for Appropriate Assessment Report, prepared by Flynn Furey
Environmental Consultants

- EU Law requires that the public are consulted in relation to Natura Impact Matters.
- In their description of the works, Flynn Furey fail to reference the type of equipment / machinery used or the industrial proposes etc carried out on site. the need for the additional paved area is not explained. The only reasonable explanation for the need for the additional hard stand is that it is an attempt at project splitting as the applicant seeks to build a biodigester at the site.
- The stated works area of 0.28ha is incorrect.
- The report fails to consider the interaction between the spreading of sewerage sludge and the protection of water bodies.
- It is not clear to members of the public as to what planning applications were considered in the assessment of combination effects.
- The applicants AA screening Document is entirely inadequate. It considers only the impact of the development within the boundary of the SAC and not the potential impact outside the SAC boundary. It does not deal with alternatives which could avoid risks particular to the application site.
- The submission refers to and includes extracts from:
 - S.I. No. 605/2017 - European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017. (Section 4)
 - S.I. No. 148/1998 - Waste Management (Use of Sewage Sludge in Agriculture) Regulations, 1998
 - The Mr. Justice William M. McKechnie judgement under An Taisce v an Bord Pleanála, an Taisce v an Bord Pleanála, Sweetman v an Bord Pleanála [2020] IESC 39
 - The judgement in the case of C-461/17 (Reference for a preliminary ruling – Environment - Directive 92/43/EEC - Conservation of natural habitats - Conservation of wild fauna and flora - Road construction project - Appropriate assessment of effects on the environment - Extent of the obligation to state reasons - Directive 2011/92/EU -

EIA and AA Screening by Planning Authority

- The submission references the requirement for subthreshold analysis for EIA.
- The Planning Authorities AA assessment did not adequately consider cumulative impacts; it did not consider impacts outside the footprint of the SAC and asked no questions as to traffic, alternative sites, alternative processes, risks, flooding, haul routes, spreading lands, potential disturbance.

The EIA and Planning Report Prepared by Rowan:

- The report fails to define the nature and purpose of the development. Nor does it set out the need for the additional paved areas having regard to the range of permitted wastes that are allowed to be collected and the restrictions imposed by conditions of the planning grants.
- There is nothing to rebut the assumption that the works for retention are other than for the intensification of operations at the site or an attempt at project splitting.
- The report contains no information as to the projected traffic movements to and from the site, land spreading locations, haul routes nor AADT figures for traffic on the R163.
- The report does not have adequate detail on Ground investigations in accordance with Eurocode 7 or Specifications and Related Documents for Grounds Investigation in Ireland (2016) 2nd edition.
- The scale of the facility should not increase as to do so would as to do so would be incoherent with the need to minimise transport requirements as would arise if waste were to be imported from other counties.
- The site is unsuitable for the handling of sewerage sludge given that most of it is within 50m of the Moynalty River as tributary of the River Boyne
- The report does not acknowledge the potential for disturbing wildlife.
- The Board are petitioned to refuse permission for the following reasons:

- The application is too vague and lacks detail to allow the Board to make a rational decision particularly in relation to Natura habitats.
- The development would contravene conditions 1, 2 and 3 as attached to ABP PL17.241695
- Traffic hazard in the absence of traffic AADT Data for the R163
- The 2.5m setback conditioned by the Planning Authority is inadequate, a setback of 4.5m is required for agricultural developments.
- The Board are requested to refuse permission for the lime silo and condition that all sewage sludge stored up to a limit of 3000 tonnes be lime treated at point of origin.
- It is inappropriate that a SUDs design is dealt with by way of condition.

6.2. Applicant Response

The applicant's response to the grounds of appeal is set out in correspondence received on the 3rd of October 2022 and can be summarised as follows:

- The application was completed to meet compliance with all aspects of the Planning and Development Regulations
- The purpose of the concrete slab and hardstanding area is to provide an area of hardstanding for the storage of washed and clean machinery, vehicles, and equipment on site. The additional area does not increase traffic entering or existing the site and has no impact on planning conditions limiting storage of sewerage sludge sourced from Meath WWTPs to 3000 tonnes.
- The purpose of the berm is to provide visual screening and to create separation between the site and the riverbank.
- The purpose of the lime silo is for the storage of lime to be used in the treatment of sludge prior to storage.
- The site holds a waste collection permit and certificate of registration and operates to strict accordance with all aspects of these permits.
- The operations carried out on site, the storage / treatment of urban WWTP sludge/biosolid fertiliser facility are commercial in nature. With regard to the

applicant biosolid fertiliser facility, sewage sludge is sourced only from Meath WWTPs.

- The screening for AA was completed as a retrospective AA screening. No mitigation measures were deemed to be required and no impacts were determined therefore no public consultation required. As no significant impacts were identified, no discussion or consideration of impacts within or outside the boundary of SAC or alternative were required.
- The processes carried out on site and the equipment used is as permitted under ABP PL17.241695. The relevant Planning Authority considered the site location (including mitigation measures in place for the protection of surface waters) in granting this permission. The development of additional paved area has no impact on this permission. There was no requirement to detail same in AA report.
- The site developments and operations have been applied for, approved, and regulated under ABP PL17.241695 which includes mitigation measure for the protection of surface waters ensuring no impacts on the Moynalty River or the wider Boyne catchment.
- Reference to the site area as 0.28ha is a typo. The report has been updated to 0.512ha. the conclusions and findings of the report are unchanged.
- Any land spreading of treated sewerage sludge occurs in-line with approved Nutrient Management Plans.
- The determination of no impacts from this development means that no cumulative or in-combination effects can occur. All applications in the vicinity of the proposed development that could potentially give rise to cumulative, or in-combination effects were considered, no significant effects on the environment were identified.
- S.I. No. 148/1998 - Waste Management (Use of Sewage Sludge in Agriculture) Regulations, 1998, is not relevant as this application does not relate to such activities.
- The applicant's previous application for an Anaerobic Digestion Facility has no relevance to this application.

- This is not an intensification application as the storage, volume and source of sewage sludge remains the same.
- The appropriate assessment screening conducted by the Planning Authority is a separate and standalone assessment that was conducted externally to the applicants planning application and is within the remit of the Planning Authority. The AA screening report conducted on behalf of the applicant for fulfilling the requirements of this planning application was conducted by Flynn Furney.
- Ground investigation works were not required as part of the Rowan Environmental and Planning Report therefore Eurocode 7 was and is not applicable.
- No disturbance to wildlife will occur as a result of the development with the implementation of appropriate mitigation measures as detailed in the Environment and Planning Report. No impacts to wildlife were highlighted in the appropriate assessment screening report.

6.3. Planning Authority Response

The Planning Authority's response to the issues raised in the grounds of appeal and in the first party response is set out in the letters received on 28th of September 2022 and 21st October, respectively. The response can be summarised as follows:

- The Planning Authority is satisfied as to the validity of the subject planning application, that the issue of appropriate assessment has been suitably appraised and addressed and that the proposed development as presented does not constitute a form of development which by itself or in combination with other development in the area triggers the requirement for an environmental impact assessment (EIA).
- The Planning Authority is satisfied that the proposed development and site selection represents a suitable form of development.
- The issues of traffic hazard / traffic safety / traffic impacts were suitably appraised as part of the assessment of the planning application.

- The planning authority is satisfied that all matters relating to the validity of the application, appropriate assessment and EIA screening were considered in the course of its assessment all of the planning application as detailed in the planning officers' reports.
- The proposed development as presented is considered to be consistent with proper planning and sustainable development of the area and permission should therefore be granted.
- The planning authority respectfully requests that the Board uphold his decision to grant permission and for the proposed development.

6.4. **Observations**

None

6.5. **Further Responses**

The Appellants submission on the Applicants response to the grounds of appeal, received 1st November 2022, can be summarised as follows:

- The development permitted under ABP PL 17.241695 (MCC Ref. KA120937) was for the storage of sludge / bio solid fertiliser. Permission for the retention of the lime silo was previously refused under ABP PL17.249303, the Board was at liberty to grant a split decision if it found a legal basis for doing so.
- The retention of the lime silo implies mixing of sewage sludge and lime on site. How can this process be carried out effectively, is lime dosing being carried out on site without permission. Lime dosing should be carried out at the Navan sewage works.
- The scope of activity requiring AA can extend beyond matters that specifically require planning permission.
- Spreading sewage sludge in an SAC catchment has the potential to adversely impact water quality, it is reasonable enquire as to where the spread lands are.

- In C-461/17 Holohan and Others, the ECJ confirmed that the impact on protected species outside the boundaries of the natural habitat SAC must be considered.
- In respect to cumulative impacts, the Board is now the competent authority to carry out AA. Reference is made to Tara Mines Tailings Pond which discharges water to the River Boyne and to Meath Planning Ref: 22331 (currently on appeal ABP Ref:315173-22).
- The submission raises a number of queries including: Why is more machinery required? Where, and why is it washed? Why is more concrete area required? Is lime added to sludge on site? etc.
- The site sections provided do not provide sufficient information to allow the project to be assessed under AA. Reference is made to Balcadden Road SAA Residents Association Ltd v An Bord Pleanála (2020) regarding the requirement to provide sufficient details of substructures.

7.0 Assessment

7.1. Introduction

7.1.1. Having examined the application details and all other documentation on file, including the submissions received in relation to the appeal, and having inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Nature and Extent of Existing Development on Site.
- Nature and Extent of Proposed Development.
- Environmental Impact Assessment
- Appropriate Assessment
- Legal, Procedural and Other Matters

7.1.2. I am satisfied that all other issues were adequately addressed by the Planning Authority and that no other substantive issues arise.

7.2. Nature and Extent of Existing Development on Site.

- 7.2.1. In 2013, Meath County Council decided to grant planning permission for the retention of the change of use of an existing permitted agricultural shed to use as a unit for the storage of sludge / bio solid fertiliser prior to removal for land spreading. This decision was subject to a third-party appeal to An Bord Pleanála (PL17 241695), who upheld the decision of Meath County Council and granted planning permission. It is of relevance to note that the Board, on consideration of the limited scale of the development and the nature of the receiving environment, formed the opinion that the development would not have significant effects on the environment and that the need for an Environmental Impact Statement did not arise. Furthermore, following screening, the Board concluded that the development would be unlikely to have a significant effect individually or in combination with other plans or projects on a European site, and therefore appropriate assessment was not required.
- 7.2.2. Conditions attached to the grant of permission under ABP Ref: PL17 241695 restricted the tonnage of sludge / bio-solid fertilizer accepted at this facility at 3,000 tonnes per annum and to waste from Meath County Council Wastewater Treatment Plants only. Land spreading activities were to comply with SI 610 of 2010 (Good Agricultural Practice for the Protection of Waters) and Meath County Council's 'Protocol for the use of bio-solids in Agriculture in County Meath.
- 7.2.3. On the basis of the above, I am satisfied that the use of the site for the for the storage of sludge and biosolids prior to land spreading has been established.

7.3. **Nature and Extent of Proposed Development.**

- 7.3.1. Planning permission is now being sought for alterations to the existing development entrance off the R163 along with retention permission for a top-soil berm, concrete pad, hard standing area, and a lime silo. No amendments to the previous grant of planning permission are being sought, in particular, the applicant is not seeking to increase the volume or to vary the source of the sewage sludge accepted at the facility. The presence of a lime silo on site suggests that the activities carried on site have been extended to include for the on-site treatment of sludge (lime stabilisation) the potential impacts of which shall be considered later in this report.
- 7.3.2. As noted in the appeal, the applicant, in association with others, has in recent years made a number of incomplete applications to Meath County Council for development

of an anaerobic digestion facility at this site. The appellant is concerned that the proposed works for retention represent an intensification of operations on site and/or an attempt at project splitting in order to circumvent EIA requirements. However, having reviewed the information / documentation on file and having inspected the site, I am satisfied that the development proposed / sought for retention could reasonably be considered as being ancillary to the existing authorised facility on site and therefore does not involve any project splitting. Furthermore, I am satisfied that if permitted the development proposed / sought for retention would not result in intensification of operations on site, which are regulated under the previous grant permission and other regulatory authorisations (waste collection permit etc), and therefore would not result in an intensification of nuisance caused by sewage sludge (in terms of odour etc) or in increase in the demand for land spreading.

- 7.3.3. The following shall comprise an assessment of the individual elements of the proposal.

Development Entrance:

- 7.3.4. The existing sludge storage facility is served by an access off the R163 at a point where the 80 km/hr speed limit applies. Permission is being sought to alter the entrance by removing and setting back the entrance piers and walls to facilitate the creation of a wider splayed area at the junction of the entrance and the public road. In my opinion, the proposed works if implemented would improve the safety of traffic turning movements at the entrance without having a significant impact on the visual amenities or rural character of the area and therefore, I consider the proposed works to be acceptable in principle. I refer the Board to the conditions attached to the Planning Authority's grant of permission, in particular Conditions 4 and 6 which relate to the design and layout of the proposed upgraded entrance and the provision of adequate sightline distances. In the event that the Board is minded to grant permission for the proposal, I would recommend that similar conditions be attached to the decision.

Soil Berm

- 7.3.5. A topsoil berm, with a stated area of 1,102sqm has been provided along the eastern site boundary, adjacent to the Moynalty river and to the north of the existing machinery storage shed. The berm measures approximately 105m in length, 10m in width and is shown to a maximum height of c2.0m. The stated purpose of the berm is to provide visual screening and to create separation between the site and the riverbank. In accordance with the details provided by the applicant (Section 1.4 of the Appropriate Assessment Screening Report), works associated with the construction of the berm took place over a weeklong period in April 2021.
- 7.3.6. While I have no objection in principle to the construction of a topsoil berm as a boundary between the sludge storage facility and the river, I consider, that the berm in question, due to its proximity to the river has likely altered the riparian area at this location. However, having regard to the nature and limited scale of the works undertaken, I do not anticipate any significant long-term effects on the local environment, habitat, or species. I note that the berm is now established with new vegetation, and I am satisfied that its provision allows for the retention of a wildlife corridor along the riverbank.

Hard surfaced area

- 7.3.7. The proposal includes for the retention of the pouring of concrete for the concrete pad with an area of 538m² to the north of the sludge storage shed and placing of crushed rock for the creation of hard stand with an area of 4,581m² to the north of the machinery shed and to the west of the topsoil berm (for retention). The stated purpose of the concrete slab and hardstanding area (combined area of 5,119sqm) is to provide an area of hardstanding for the storage of washed and clean machinery, vehicles, and equipment associated with the permitted sludge storage facility on site.
- 7.3.8. I consider that insufficient information has been provided on the precise nature and use of the machinery etc stored on site and in relation to the maintenance and care of same. The applicant refers to the storage of 'washed and clean machinery, vehicles, and equipment' however the applicant fails to clarify where the washing of

vehicles etc takes place. I am concerned that any on-site washing of vehicles, machinery etc associated with the storage / transportation or treatment of sludge, has the potential to result in the contaminants entering the surface water system. Potential leakage or spillage of hydrocarbons etc from parked / stored vehicles and plant is also a concern.

- 7.3.9. I also consider that insufficient information has been provided in relation to the collection, treatment, and disposal of surface water on site. During site inspection, which occurred during a period of heavy rainfall, I observed significant ponding of surface waters across the hard stand area which I consider an indication of the poor drainage characteristics of the hardcore area. Therefore, on the basis of the information available I am not satisfied that the existing surface water infrastructure on site is fit for purpose, and I consider that the observed conditions on site at time of inspection represent an environmental threat having regard to the proximity of the development works to the Moynalty River and the risk of contaminated surface water entering the river system. I recommend that permission be refused on this basis.

Lime Silo

- 7.3.10. The lime silo for retention is located to the front (east) of the sludge storage building and is estimated to measure 7.8m in height. There are no details on the file in relation to the storage capacity of the silo.
- 7.3.11. The original grant of planning permission (ABP Ref: PL17 241695) allowed for the storage of sludge on site. The presence of a lime silo indicates that the operations on site have been extended to include for the on-site treatment of sludge by way of alkaline stabilisation. This process involves the addition of lime to the sludge in order to increase the pH to 12 thereby killing off pathogens and bacteria within the sludge. It is evident from the various guidelines and protocols that the treatment of sludge / biosolids is a necessary pre-requisite prior to any land spreading and is widely practiced. However, the Board will be aware that lime, due to its high pH value, can cause considerable environmental damage if it is not stored and handled correctly.

Therefore, I consider it necessary to ensure that the treatment process carried out on site is undertaken in an effective manner. In this regard, I am not satisfied that sufficient information has been provided on the lime stabilisation process carried out on site, including how and where the process of lime stabilisation takes place, the nature of the machinery / equipment involved, and the quantity of lime required to facilitate the treatment of the c3000 tonnes of sludge accepted at the site per annum etc. It is therefore unclear whether there is a risk of pollution arising from the lime stabilisation process carried out on site and I recommend that permission be refused on this basis.

7.4. Environmental Impact Assessment

- 7.4.1. Screening for Environmental Impact Assessment and the need for subthreshold EIA is raised in the grounds of appeal.
- 7.4.2. Projects that are likely to have significant effects on the environment are identified in Annex I (mandatory EIA) and Annex II (possible EIA) of the EIA Directive. These Annex have been transposed into Irish legislation by Part 1 and Part 2, Schedule 5 of the Planning and Development, 2001 (as amended).
- 7.4.3. The development, the subject of this application, comprises proposed alterations to the existing development entrance off the R163 and the retention of a top-soil berm, concrete pad, hard standing area, and a lime silo. The proposed development as presented does not in itself fall within a category of development under Part I and Part II, Schedule 5 of the Planning and Development Regulations, 2001 and there is no mandatory requirement for Environmental Impact Assessment.
- 7.4.4. The development is however associated with an existing facility for the storage of sludge / bio solid fertiliser. The Planning and Development Regulations 2001 (as amended) provide that EIA is required for sludge-deposition sites where the expected annual deposition is 5,000 tonnes of sludge (wet) (Class 11(d) of Part 2 of Schedule 5). The existing facility, permitted under ABP PL17 241695, is authorised to accept a maximum of 3000 tonnes of sludge / biosolids per annum from Meath County Council Wastewater Treatment Plants and is therefore sub-threshold. The

Board determined, in the assessment of the application, that a sub-threshold EIAR was not required.

7.4.5. Regard is had to Schedule 5, Part 2, Class 13 (a) of the Planning and Development Regulations, 2001 which requires EIA for any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:

(i) result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and

(ii) result in an increase in size greater than – - 25 per cent, or - an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.

7.4.6. As noted in the previous section of this report, the proposed development is ancillary to the existing permitted development on site and does not alter the intensity of the activity on site or the capacity of the existing operation. Therefore, in my opinion, the proposal does not fall under Class 13 (a).

7.4.7. Having regard to the planning history of the site and the nature of the development proposed which is not a category of development under Part I and Part II, Schedule 5 of the Planning and Development Regulations, 2001, I am satisfied that the need for EIAR can be excluded at pre-examination stage.

7.5. **Appropriate Assessment**

Compliance with Article 6(3) of the Habitats Directive

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

Background on the Application

7.5.2. The application was accompanied by Screening Report for Appropriate Assessment, prepared by Flynn Furney Environmental Consultants. This document, originally prepared for the purposes of a Section 5 referral sought from Meath County Council (ref: KAS52136), considers whether the project, comprising the removal and stock piling of surface soil and over burden material, the pouring of concrete for the concrete pad and the laying and levelling of crushed rock for the creation of the hard stand, would necessitate appropriate assessment.

7.5.3. The screening document was updated on the 30th of May 2022, prior to the lodgement of the planning application with MCC. This updated document includes the addition of an executive summary (page 2) which lists the principal activities associated with the planning application, including the addition of works to the development entrance off the R163 and the retention of the lime silo, and in which the author expresses his opinion that these changes do not alter the results of the appropriate assessment and that none of the activities mentioned amount to a significant alteration to the protects description or scope of works as reviewed in the 2021 report. A further updated screening document (September 2022) was submitted with the applicant's response to the grounds of appeal. This updated document addresses a discrepancy noted in the appeal which incorrectly stated the combined area of the concrete pad and hardstand as 0.28ha. The applicants have stated that correct area as 0.512ha. For clarification it is the updated screening document (September 2022) which is considered in this screening assessment.

7.5.4. The applicants Appropriate Assessment Screening Report was prepared in line with current best practice guidelines. The report concludes with the following statement:

In my professional opinion and in view of the best scientific knowledge and in view of the conservation objectives of the site, the hardstanding and concrete pad construction, individually or in combination with other plans and project (either directly or indirectly) are not works that are likely to have any significant effect on any of the European sites and indeed have not done so. Therefore, Appropriate Assessment is not required.

Screening for Appropriate Assessment – Test of likely significant effects

- 7.5.5. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.5.6. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Site and Development Description:

- 7.5.7. The development site is described on page 6 of the AA Screening Report. The site of the (hardstanding area for retention) is described as a former greenfield site used for arable crop production on the edge of a yard used for the processing and handling of organic waste. The yard is classified as buildings and other artificial surfaces (BL3) under Fossit (2000) with the site surrounds including the soil bunds classified as scrub (W51) which is young and emerging. The landscape surrounding the works area is comprised mostly of arable crops and improved grassland separated by roads, treelines, and hedgerows.
- 7.5.8. The AA Screening report notes that a field survey and site inspection (June 2021) were undertaken as part of the assessment process. The methodology and results of the surveys carried out are set out in Appendix 1 of the report. It is noted that no qualifying habitats and species associated with the River Boyne and Blackwater SAC or SPA were recorded within the survey area.
- 7.5.9. A description of the project is provided on pages, 2, 6 and 7 of the AA Screening Report and in Section 2.0 of this report. In brief, the project comprises proposed alterations to the existing development entrance off the R163 and the retention of a top-soil berm, concrete pad, hard standing area, and a lime silo. As per the details submitted, the works, the removal and stock piling of surface soil and over burden material, pouring of concrete for the concrete pad and the laying and levelling of crushed rock for the creation of the hard stand, were carried out over a weeklong period in April 2021. This area is currently being used for the storage of vehicles and equipment associated with the permitted sludge storage facility on site.

European Sites:

7.5.10. The development site is not located in or immediately adjacent to a European site. Section 2.3 of the AA Screening Report identifies four sites within 15km of the proposed works (zone of influence).

| Table 7.1: Summary Table of European Sites within Zone of Influence | | |
|--|------------------|-----------------|
| European Site | Site Code | Distance |
| The River Boyne and River Blackwater SAC | 002299 | c.2.2km |
| The River Boyne and River Blackwater SPA | 004232 | c.2.2km |
| Girley (Drewstown) Bog SAC | 002203 | c.10.3km |
| Killyconny Bog (Cloghbally) SAC | 000006 | c.12.2km |

7.5.11. Table 3 of the report lists the conservation objectives of the Girley (Drewstown) Bog SAC and Killyconny Bog (Cloghbally) SAC and determines that there is no likely risk to the conservation objectives of either site due to the conservation objectives and the nature of the proposed works, the lack of connectivity between the works area and the designated sites and available separation distances. I consider this a reasonable conclusion.

7.5.12. The report identifies a hydrological pathway between the site and the River Boyne SAC and SPA via the Moynalty River system which adjoins the eastern boundary of the site. The Conservation Objectives and qualifying interest of these sites are set summarised in Table 7.2 below.:

| Table 7.2 - summary of European sites within the Sphere / zone of influence | | |
|--|--------------------------------------|---|
| Site Name, Designation and Site Code, | Approx. Distance form Site | Conservation Objectives; Qualifying Habitats and Species |
| The River Boyne and River Blackwater SAC, 002299 | The site is partially within the SAC | To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: 7230 Alkaline fens |

| | | |
|--|------------------------------|--|
| | | <p>91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnion incanae</i>, <i>Salicion albae</i>)*</p> <p>* denotes a priority habitat</p> <p>1099 River Lamprey (<i>Lampetra fluviatilis</i>)</p> <p>1106 Salmon (<i>Salmo salar</i>)</p> <p>1355 Otter (<i>Lutra lutra</i>)</p> |
| The River Boyne and River Blackwater SPA, 004232 | The site is adjacent the SPA | To maintain or restore the favourable conservation condition of the bird species listed as Special Conservations Interests for this SPA: A229 Kingfisher <i>Alcedo atthis</i> |

Identification of Key Significant Effects

7.5.13. Section 3 of the AA Screening Report considers the potential for the proposed works to impact upon Natura 2000 sites. As per the details provided, none of the individual elements of the proposed development are likely to give rise to significant impacts on the Natura 2000 sites, given the limited scale and duration of the works and the significant buffer distance between the works area and the Natura designated sites. As no work took place within the boundary of any natura 2000 site, there will be no direct impacts on Natura 2000 sites through land take and habitat loss. No qualifying interests of the River Boyne and River Blackwater SAC and SPA were recorded during the site survey of the works site or the survey of the Moynalty River and it is stated that losses or impacts to the species that form the qualifying interests of the River Boyne and River Blackwater SAC and SPA are not anticipated and have not occurred.

7.5.14. The Moynalty River, which extends along the eastern boundary of the site, provides a direct hydrological pathway between the appeal site and the River Boyne and Blackwater SAC (Site Code: 002299) and SPA (Site Code: 004232) approximately 1.7 kilometres to the south of the site or 2.2 metres downstream. As a result of this

direct hydrological link, there is a potential risk that contaminated surface waters from the project site during both the construction and operational phases, could once discharged river system, contribute to the deterioration of water quality in the Natura 2000 sites.

Construction Phase:

- 7.5.15. Construction phase activity on site included the removal and stock piling of surface and over burden material, the pouring of concrete for the concrete pad and the importation and spreading of crushed rock for the creation of the hard stand. In accordance with section 1.4 of the applicants AA report, such works were carried out over a weeklong period in April 2021.
- 7.5.16. The works, in particular the stock piling of surface and over burden material to form the soil bund along the eastern boundary of the hard stand area due to the proximity to the Moynalty River, had I consider the potential to result in material from the site (soils, vegetation etc) entering the river system which in turn has the potential to impact on water quality. However, in my opinion the limited duration of the works together with the separation distances between the works area and designated European sites mean that water quality in the European sites was unlikely to have been negatively affected by any contaminants, such as silt etc from the construction activities due to dilution and settling out over such a distance.
- 7.5.17. The proposed works at the entrance will likely involve works of demolition, construction and hard landscaping. I consider that the nature and limited scale of these works are such that would be unlikely to have significant environmental impacts that could negative affect the River Boyne SAC or SPA.

Operational Phase

- 7.5.18. In terms of the potential environmental effects arising during the operational phase of the development, I consider the potential for contaminated surface water discharging to the Moynalty River and ultimately to the River Boyne SAC and SPA to be the most relevant.

- 7.5.19. I have previously outlined how the proposed development could pose an environmental risk to the receiving environment in particular the Moynalty river, though the lime stabilisation process associated with the retention of lime silo, the poor drainage characteristics of the hard-core area and its intended use of the parking and storage of vehicle, machinery, and equipment and through the on-site washing of said vehicles, machinery, and equipment.
- 7.5.20. The features of interest associated with the River Boyne and Blackwater SAC downstream of the Moynalty watercourse include alkaline fens, alluvial forests and aquatic species including River Lamprey, Salmon, and Otter. The latter aquatic species are particularly sensitive to changes in water quality. The feature of interest associated with the River Boyne and Blackwater SPA is Common Kingfisher (*Alcedo Atthis*), which can also be vulnerable to changes in water quality. I therefore consider that the proposed development could be prejudicial to the receiving environment and that likely significant effects on the integrity of the qualifying interests associated with the River Boyne and Blackwater SAC and the River Boyne and Blackwater SPA cannot be ruled out.

Screening Conclusion

- 7.5.21. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development either individually or in combination with other plans and projects would not be likely to have a significant effect on the River Boyne and River Blackwater SAC (Site Code: 002299) and The River Boyne and River Blackwater SPA (Site Code:004232) or any other European site, in view of the site's conservation objectives. In such circumstance the Board is precluded from granting approval/permission.

7.6. Legal, Procedural and Other Matters

- 7.6.1. The grounds of the third-party appeal highlight a number of perceived procedural problems associated with the application submitted and the Planning Authority's

assessment on the application. The main issues raised in respect of procedural issues are dealt with below.

Public Notices:

- 7.6.2. The grounds of appeal argue that as the site notice was erected on the same date that the application was lodged with the Planning Authority, it was not exhibited for the full 5-week (35 day) period in accordance with the requirements of Article 20 of the Planning and Development Regulations 2001 (as amended), it is contended that the site notice should have been erected at least by the preceding day. It is further argued that the description of the development as set out in the newspaper notice is inadequate and fails to meet the requirements of Article 18(d)(ii) and (iv).
- 7.6.3. Firstly, it is my opinion that procedural matters such as a determination as to the adequacy (or otherwise) of the public notices and the subsequent validation (or not) of a planning application, are in generally, the responsibility of the Planning Authority and I note that in this instance the Planning Authority took the view that the submitted documentation satisfied the minimum regulatory requirements. Notwithstanding, I would like to note the following in response to the issues raised.
- 7.6.4. Article 20 requires a site notice to be maintained in position on the land or structure concerned for a period of 5 weeks from the date of receipt of the planning application by the planning authority. In accordance with the information on file, the site notice was erected on the 10th of June 2022, the same date the planning application was received by the Planning Authority, in my opinion this would accord with the requirements of Article 20. There is nothing in the grounds of appeal to suggest that the notice was not maintained for the requisite period of 5 weeks from this date.
- 7.6.5. In relation to the development as described, while the newspaper notice does not state the purpose of the structures for retention, it does, I consider, adequately describe the nature and extent of the structures proposed and I note again that the notices were considered acceptable by the Planning Authority. Article 18.1(d)(iv) of the Planning and Development Regulations requires the newspaper notice to include (where relevant) an indication of the requirement of an IPPC, industrial emissions, or waste licence. The information on file suggests that the activities carried out on site

are subject to a waste collection permit and a 'Certificate of Registration' in accordance with the provisions of S.I. No. 32 of 2010 – Waste Management (Registration of Sewage Sludge Facility) Regulations 2010. Neither authorisation is required to be included in the newspaper notice. There is no indication that the activities carried out on site are subject to either an IPPC or waste licence and therefore the notice would not contravene Section 18.1(d)(iv) of the Regulations.

- 7.6.6. Further to the above, I am satisfied that any perceived irregularities in the timing of the erection of the site notice and in the description of the development did in no way impinge upon or prejudice third party's rights in respect of submitting observations or appealing the planning application. The above assessment represents my de novo consideration of all planning issues material to the proposed development.

Deficiencies / Inaccuracies in the Application

- 7.6.7. In their submission to the Board on the 1st of November 2022, the appellants suggest that the site sections provided do not provide sufficient information to allow the project to be assessed under AA. The submission refers to the legal judgement under Balcadden Road SAA Residents Association Ltd v An Bord Pleanala [2020] IEHC 586, and the requirement to provide sufficient details of substructures. I have reviewed the plans and sections etc submitted with the application and I am satisfied, having regard to the nature and extent of development proposed, that the drawings submitted adequately describe the works/structures to which the application relates and are of sufficient detail to allow for the assessment of same.
- 7.6.8. As noted in the appeal, combined footprint of the concrete pad and hardcore area is 0.512ha and not 0.28ha as stated in the AA screening document. The applicant has acknowledged the error and has submitted an updated AA screening document to address same. This document was considered in the above assessment.

8.0 Recommendation

- 8.1. Arising from my assessment above, I consider the proposed development to be contrary to the proper planning and sustainable development of the area and I

therefore recommend that planning permission be refused for the reasons set out below.

9.0 Reasons and Considerations

| | |
|----|---|
| 1. | <p>Having regard to the planning history of the site, namely ABP Ref: PL17 241695 which allowed only for the storage of sludge / bio solid fertiliser, the retention of the lime silo, if permitted, would extend the operations on site to include for the on-site treatment of sludge by way of alkaline stabilisation. The Board is not satisfied that adequate information has been submitted with the planning application and appeal detailing the lime stabilisation process undertaken on site, including the nature of the machinery / equipment involved, and the amount of lime used. In the absence of such details, it is considered that the retention of lime silo for the treatment of sludge/biosolids would give rise to a risk of environmental pollution and be prejudicial to public health.</p> |
| 2. | <p>On the basis of the information submitted with the application and the appeal, the Board is not satisfied that the applicant has demonstrated that the arrangements for the collection, treatment and discharge of water are adequate to cater for the proposed development without giving rise to the risk of environmental pollution. In this regard, it is considered that the proposed development would be prejudicial to public health and would, therefore, be contrary to the proper planning and sustainable development of the area.</p> |
| 3. | <p>On the basis of the information provided with the application and appeal and the absence of a Natura Impact Statement, and having regard to the potential for the discharge of contaminated water to the Moynalty River that provides hydrological pathway to the River Boyne and Blackwater SAC and SPA, the Board cannot be satisfied that the proposed development individually, or in combination with other plans and projects would not be likely to have a significant effect on the River Boyne and Blackwater SAC (Site Code: 002299) and the River Boyne and River Blackwater SPA (Site Code:004232), in view of the site's conservation objectives.</p> |

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|--|---|
| | In such circumstances the Board is precluded from granting retention of planning permission for the facility in question. |
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Lucy Roche
Planning Inspector

21st August 2023