



An  
Bord  
Pleanála

## Inspector's Report ABP-316420-23

<b>Development</b>	Retention of cattle house and associated works.
<b>Location</b>	Ballinrahin, Ballickmoyler, Co. Laois
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	2354
<b>Applicant</b>	James Malone
<b>Type of Application</b>	Permission to retain
<b>Planning Authority Decision</b>	Grant Permission to retain
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Peter Sweetman and on behalf of Wild Ireland Defence clg
<b>Date of Site Inspection</b>	27 <sup>th</sup> June 2023
<b>Inspector</b>	Dolores McCague

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## **1.0 Site Location and Description**

- 1.1.1. The site is located in the townland of Ballinrahin, Ballickmoyler, Co. Laois, approximately 1km east of Ballickmoyler, east of the N80 and north west of Carlow town.
- 1.1.2. The site is given as 0.28ha. The associated landholding, as outlined in blue, is 4.05ha. On the date of inspection there were no cattle on the land.

## **2.0 Proposed Development**

- 2.1.1. It is proposed to retain the cattle house with slatted underground tank, feed passage, straw bedded area, associated walled dungsteds and all ancillary site works.
- 2.1.2. The application is accompanied by maps and drawings:
  - A 6" map showing the location.
  - A 1:2,500 map showing the landholding of 4.05ha.
  - A 1:500 site plan showing the existing site.
  - Plans, elevations, and section, scale 1:100.
- 2.1.3. The application form states that 10 beef cattle and 10 young cattle will be accommodated in the proposed development.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The Planning Authority decision, dated 13<sup>th</sup> April 2023, was to grant permission subject to 9 conditions, including:
  - 3) development undertaken in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022.  
Reason: In the interest of environmental protection and in particular to protect against the pollution of surface and ground waters.
  - 4) no increase in the number of livestock being accommodated unless otherwise

agreed with in writing by the Planning Authority and in accordance with an approved Farm Waste and Nutrient Management Plan.

Reason: In the interest of environmental protection and in particular to protect against the pollution of surface and ground waters.

5) All uncontaminated surface water run-off from the proposed development shall be collected separately from farmyard materials (slurry, silage effluent, washings and contaminated surface water) and shall be disposed of directly in a sealed system to adequate stoned filled soakpits, or to a drain, located within the curtilage of the application site or alternatively, shall be recycled for use in the proposed development. A monitoring chamber (manhole) shall be provided for the monitoring of uncontaminated surface/roof water prior to such water entering any soakaway or drain. All soakaways shall be designed in accordance with BRE Digest 365-Soakaway Design. No contaminated storm water shall be discharged to any storm water drain or watercourse.

Reason: In the interest of environmental protection and in particular to protect against the pollution of surface and ground waters.

6) All storage facilities (slatted underground tank & dungstead) shall:

a) be designed, sited, constructed, maintained and managed so as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water of any effluent produced,

b) Comply with such construction specifications for those facilities as may be approved by the Minister for Agriculture, Food and the Marine. Separation distances set out in Department of Agriculture S.123 – Minimum Specification for Bovine Livestock Units and Reinforced Tanks (Sept 2017) shall be adhered to. All construction works shall be carried out in accordance with the relevant Department of Agriculture, Food and the Marine building specifications.

Reason: In the interest of environmental protection and in particular to protect against the pollution of surface and ground waters.

7) The developer shall ensure run-off from soiled yard areas shall be kept to a minimum, collected in suitably constructed tanks and if land spread shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022.

Contaminated surface water run-off shall be disposed of directly in a sealed system. All soiled waters shall be directed to a storage tank. No effluent or slurry shall discharge or be allowed to discharge to any stream, river, watercourse, groundwater body or to the public road.

Reason: In the interest of environmental protection and in particular to protect against the pollution of surface and ground waters.

8) All effluent, soiled water and solid waste shall be stored on-site in adequately sized and sited underground watertight structures and shall be disposed of by land spreading in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2002. Spreading shall be only in accordance with the usage of the land and the capacity of the land to retain, neutralise and decompose them. They shall not be transported over public roads except in approved leak proof transporters. There shall be no land spreading of organic fertiliser on lands with underlying extreme groundwater vulnerability without the written prior consent of the Planning Authority.

Reason: In the interest of environmental protection and in particular to protect against the pollution of surface and ground waters.

9) All overground temporary or permanent fuel/chemical storage tanks shall be adequately bunded to protect against spillage and leakage etc. Bunding shall be impermeable and shall be capable of retaining a volume equal to 1.50 times the capacity of the overground storage tank it is being provided for. Filling and off-take points shall be located within the bunded area.

Reason: In the interest of environmental protection and in particular to protect against the pollution of surface and ground waters.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

#### **3.2.2. The Planning Report recommending permission, 13<sup>th</sup> April 2023, includes -**

- Screened for AA, no likely significant impacts are predicted due to the nature of the proposed development.
- Not within flood zone A or B.

- Site is located in ‘Lowland Agricultural Areas’ per Laois County Development Plan (LCDP) 2021-2027.
- UD Ref 22/80 in respect of unauthorised structure, a slatted tank and hardstanding concreted base.
- CDP policy
- Total area to be retained is 276m<sup>2</sup> and 52m<sup>2</sup>.
- Access is off a cul-de-sac. Sightlines to the north are not achievable. Applicant has indicated boundary set-back. On a local tertiary road 60m sightlines are required. Sight distance of 50m achievable to the north, this is deemed acceptable given the minimum traffic. Movements will not be intensified.

#### 3.2.3. Other Technical Reports

#### 3.2.4. Waste Management & Environmental Protection, 11<sup>th</sup> April 2023, conditions.

### 3.3. Prescribed Bodies

#### 3.3.1. Uisce Éireann, 3<sup>rd</sup> March 2023, conditions.

### 3.4. Third Party Observations

#### 3.4.1. A third party observation on the file has been read and noted.

## 4.0 Planning History

UD Ref 22/80 is referred to in the planner’s report.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1. Laois County Development Plan 2021 – 2027 is the operative plan, it includes:

The Council recognises the importance of agriculture for sustaining, enhancing and maintaining a viable rural economy.

Policy Objectives for Agriculture and Food Production

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.

RL 3 - Work with the Eastern and Midlands Regional Assembly and other relevant stakeholders in identifying areas of high value agricultural land in the County to address the need for sustainable food supplies.

RL 4 - Continue to support and work with Laois Food producers to promote local provenance, strengthen the Laois food industry and transform Laois into one of Ireland's top food destinations.

#### DM RL 1 General Consideration for Agricultural Buildings

Agricultural developments have the potential to impact on the environment and the landscape. The traditional form of agricultural buildings is disappearing with the onset of advanced construction methods and wider range of materials. Some new farm buildings have the appearance of industrial buildings and due to their scale and mass can have serious major visual impacts.

In dealing with applications for agricultural developments the Planning Authority will have regard to the following:

- 1) Require that buildings be sited as unobtrusively as possible and that the finishes and colour used will blend the development into its surroundings.
- 2) The proposed developments shall meet with the requirements of the Department of Agriculture with regard to storage and disposal of waste.
- 3) The Council accepts the need for agricultural buildings and associated works (walls, fences, gates, entrances, yards) to be functional but they will be required to be sympathetic to their surroundings in scale, material and finishes.
- 4) Buildings should relate to the landscape. Traditionally this was achieved through having the roof a darker colour than the walls.

5) Appropriate roof colours are dark grey, dark reddish brown or a very dark green. Where cladding is used on the exterior of the farm buildings dark colours should be used.

6) Location and impacts on the road network and other associated uses.

7) Ensure it does not have an undue negative impact on the visual/scenic amenity of the countryside and identify mitigating measures where required.

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.

All agricultural buildings should be located an adequate distance from any watercourse to reduce the risk of contamination.

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.

## **5.2. EPA Pollution Impact Potential Mapping**

- 5.2.1. The EPA have mapping under the heading Pressures & Activities include Pollution Impact Potential Mapping (PIP) for Nitrates and Phosphorus. The PIP mapping indicates a rank of 7 for Nitrate (lowest risk) and a rank of 7 for Phosphorus (lowest risk) for the submitted landholding.

## **5.3. Natural Heritage Designations**

- 5.3.1. The nearest Natura site is the River Barrow and River Nore SAC (002162) located c 1.5km, straight line distance to the south, and 3.9km straight line distance to the east.



## **5.4. EIA Screening**

- 5.4.1. 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.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.2. The third party appeal grounds include:

The planner's report failed to understand their submission.

- The threshold for screening is set out in *Kelly v An Bord Pleanála* (2014 IEHC 400). Paragraphs 26 and 47 are quoted.

Quoting conditions/ reasons:

3, 5, 6, 7, 8 and 9 are 'in the interest of environmental protection and in particular to protect against the pollution of surface and ground waters'.

CJEU Cases C-323/17 is quoted. These conditions are measures intended to avoid or reduce the harmful effects of the plan or project on the site. The AA screening and determination is a form filling exercise.

- The distance from the nearest Natura site SAC is c3.82km, the River Barrow and River Nore SAC.
- An extract from the Site Synopsis for the River Barrow and River Nore SAC is quoted, relating to the threat from agriculture.
- The judgement of the CJEU, case C-293/17 and C-294/17 states:

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 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.

- 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.
- The planning authority failed to have regard to the law.
- They request the Board to award their outgoings against the planning authority.

## **7.0 Assessment**

- 7.1.1. I consider that the main issues which arise in relation to this appeal are as follows: appropriate assessment, the principle of the development and groundwater protection, and the following assessment is dealt with under those headings.

### **7.2. Appropriate Assessment**

- 7.2.1. 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.

- 7.2.2. The proposed development comprises:

Retention of cattle house with slatted underground tank, feed passage, straw bedded area, associated walled dungsteds and all ancillary site works.

- 7.2.3. The planning authority carried out a preliminary screening for appropriate assessment and arrived at a conclusion of no potential significant effects.

### **7.3. Screening for Appropriate Assessment**

- 7.3.1. The only Natura site with any potential for effect is the River Barrow and River Nore SAC (002162) located c 1.5 km straight line distance to the south and 3.9km straight

line distance to the east. There is connectivity via a stream along the south of the lands, eastwards to the Douglas River, which joins the River Barrow and River Nore SAC at Grange Bridge, some distance to the east.

7.3.2. I am satisfied that no other protected sites need to be considered. In particular the River Nore SPA is c 24km straight line distance from the site and not hydrologically connected.

7.3.3. Site specific conservation objectives have been developed for the River Barrow and River Nore SAC which could be summarised as, to restore and or maintain the favourable conservation condition of the qualifying interest habitats and species.

7.3.4. Screening summary matrix

European Site	Site Code	Relevant QI & SCI	Distance
River Barrow and River Nore SAC	002162	<p>Estuaries</p> <p>Mudflats and sandflats not covered by seawater at low tide</p> <p>Reefs</p> <p>Salicornia and other annuals colonising 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 the British Isles</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior</p>	<p>c 1.5km, straight line distance to the south, and 3.9km straight line distance to the east; about twice as far via watercourses.</p> <p>No physical connection. Potential hydrological connection</p>

		Desmoulin's Whorl Snail Freshwater Pearl Mussel White-clawed Crayfish Sea Lamprey Brook Lamprey River Lamprey Twaite Shad Salmon Otter Killarney Fern Nore Pearl Mussel	
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7.3.11. The Pollution Impact Potential mapping for the area indicates that the subject lands rank lowest in terms of their impact potential for both nitrates and phosphorus. The proposed development is intended to accommodate 10 beef cattle and 10 young cattle; will be provided with effluent storage facilities: a dungstead and underground effluent tank; and the development is shown to have associated lands of 4.05ha immediately adjoining, on which landspreading can take place.

7.3.12. Notwithstanding potential hydrological connection to the River Barrow and River Nore SAC, impact the qualifying interest habitats or species of the protected site is not likely to have occurred from the construction of the development site and is not likely to occur from its operation given the small scale of the development and the intervening distance.

7.3.13. The proposed development is not likely to impact on the protected site.

#### 7.4. In-combination effects

7.4.1. Having regard to the nature of the proposed structures and the purposes for which they are intended, the proposed development is not likely to operate in combination with other plans or projects to impact on protected sites.

#### 7.5. Conclusion of Screening for Appropriate Assessment

7.5.1. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment, it has been concluded that the proposed

development individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002162, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.5.2. This determination is based on the following:

Distance of the proposed development from the European site and lack of meaningful ecological connections to the site.

7.5.3. This screening determination is not reliant on any measures intended to avoid or reduce potentially harmful effects of the project on a European Site.

## **7.6. Principle of Development**

7.6.1. The subject site is in a rural area. The development plan recognises the importance of agriculture for sustaining, enhancing and maintaining a viable rural economy.

7.6.2. The proposed development is acceptable in principle.

## **7.7. Groundwater Protection**

7.7.1. Landspreading areas as identified on Geological Survey of Ireland mapping, are overlying a poor aquifer and having moderate groundwater vulnerability. The EPA groundwater response recommendation is that these lands are suitable for landspreading of organic wastes subject to normal good practice.

## **8.0 Recommendation**

8.1.1. In accordance with the foregoing I recommend that the proposed development be permitted, for the following reasons and considerations, in accordance with the following conditions.

## **9.0 Reasons and Considerations**

9.1.1. The proposed development is located in a rural area where agriculture is the predominant land use. The proposed retention of the cattle house with slatted tank, and dungstед will not impact on the amenities of the area, will not affect a Natura site

or otherwise impact on the natural heritage of the area and the retention would accordingly be in accordance with the proper planning and development of the area.

## 10.0 Conditions

1.	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>All uncontaminated surface water run-off from the proposed development shall be collected separately from soiled water and shall be disposed of directly in a sealed system to adequate stoned filled soakpits, or to a drain, located within the lands or alternatively, shall be recycled for use in the proposed development. A monitoring chamber (manhole) shall be provided for the monitoring of uncontaminated surface/roof water prior to such water entering any soakaway or drain. All soakaways shall be designed in accordance with BRE Digest 365-Soakaway Design. No contaminated storm water shall be discharged to any storm water drain or watercourse.</p> <p><b>Reason:</b> To minimise soiled water in the interest of environmental protection and pollution control.</p>
3.	<p>The developer shall ensure that run-off from soiled yard areas is kept to a minimum, collected in suitably constructed tanks, and land spread in</p>

	<p>accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 as amended or replaced.</p> <p><b>Reason:</b> In the interest of environmental protection and pollution control.</p>
4.	<p>All storage facilities for farmyard effluent (slatted underground tank &amp; dungstead) shall:</p> <p>a) be so constructed, maintained and managed as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water of any effluent produced, and</p> <p>b) comply with such construction specifications for those facilities as may be approved by the Minister for Agriculture, Food and the Marine.</p> <p><b>Reason:</b> In the interest of environmental protection and pollution control.</p>
5.	<p>All effluent and soiled water shall be stored on-site in adequately sized watertight structures and shall be disposed of by land spreading in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022 as amended or replaced.</p> <p><b>Reason:</b> In the interest of environmental protection and pollution control.</p>

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.

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Planning Inspector

1<sup>st</sup> February 2024

## EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	316420		
<b>Proposed Development Summary</b>	Retain the cattle house with slatted underground tank, feed passage, straw bedded area, associated walled dungsteds and all ancillary site works		
<b>Development Address</b>	Ballinrahin, Ballickmoyler, Co. Laois.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	/
		<b>No</b>	No further action required
<b>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?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	/		Proceed to Q.3
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>	/	/	No EIAR or Preliminary Examination required



<b>Yes</b>		Class/Threshold.....		Proceed to Q.4
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<b>4. Has Schedule 7A information been submitted?</b>				
<b>No</b>	/		<b>Preliminary Examination required</b>	
<b>Yes</b>			<b>Screening Determination required</b>	

Appendix 2 Photographs

Appendix 3 Laois County Development Plan 2021-2027 extracts

Appendix 4 Site Synopsis, River Barrow and River Nore SAC (002162)

Appendix 5 Catchments.ie - Pollution Impact Potential Mapping (PIP) for Nitrates and Phosphorus, extracts

Appendix 6 Groundwater Protection Responses to the Landspreading of Organic Wastes, EPA.