



An
Bord
Pleanála

Inspector's Report ABP-316936-23

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| Development | Construction of a cubicle shed with creep areas for cattle, a sheep shed, a roofed manure pit, silage pit and ancillary works. |
| Location | Greenhall Upper, Newtowncashel, Co. Longford |
| Planning Authority | Longford County Council |
| Planning Authority Reg. Ref. | 2350 |
| Applicant | Shane Muldoon |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | Third Party |
| Appellants | Wild Ireland Defence CLG |
| Date of Site Inspection | 5 th July 2023 |
| Inspector | Dolores McCague |

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1.0 Site Location and Description

- 1.1.1. The site is located in the townland of Greenhall Upper, Newtowncashel, Co. Longford. The site is located north of Newtowncashel to the east of Lough Ree. A landholding, outlined in blue, indicating it's association with the site, is some 5.19ha. This holding runs in a strip along a minor local road, from its junction with a more important local road onto which the site fronts. The front of the site is occupied by agricultural structures which adjoin a dwelling, to the west, outside the landholding.
- 1.1.2. Aerial photos of associated lands, titled 'nutrient management plan', show five locations, two adjoining Lough Ree at Cashel, one farther from the lake at Cashel another one nearby at Elfleet and one at Carrigeens some distance to the north-east. Some of these lands are in pasture and some have woodland and scrub. Two of the landspreading areas at Cashel are mainly within the SAC. There is a roadside sign on these lands referring to commonage (Cashel Commons).
- 1.1.3. It is stated that the landspreading lands total 42ha.
- 1.1.4. Site given as 0.3ha.

2.0 Proposed Development

- 2.1.1. It is proposed to construct a cubicle shed with creep areas for cattle, a sheep shed, a roofed manure pit, new silage pit and ancillary works (concrete yards, effluent tank etc.) in an existing farmyard area, using existing farm road / public road entrance.
- 2.1.2. In the Supplementary Planning Application Form for Agricultural Development, the nutrient management plan states that 42 ha is available for slurry spreading within the farm plus the outfarm at Elfleet; 17ha is owned and 27ha is long term leased.

Details given of the farmyard:

Gross floor existing 206m²

Proposed 476 m²

The new sheep shed is to be 219m² and 7m high.

The new cubicle shed is to be 183m² and 6.1m high.

Hardcore yards c480m²; a lot of this will be concreted in this application and storm water drained to adequately designed SUDS soakaway.

Silage pit 354 m² and concrete yard 247 m².

The number of animals to be housed in the proposed development:

Cattle:

0 cows,

37 sucklers,

1 head of cattle 450kg,

7 head of cattle 250kg,

18 calves.

Sheep: intending to add a flock of sheep when facilities have been constructed.

Applicant is a new registered organic farmer hence the need for new cubicle housing and existing slatted shed.

Number of animals to be housed in the existing development:

Cattle

0 cows,

18 sucklers,

0 head of cattle 450kg,

0 head of cattle 250kg,

18 calves.

Sheep – 60

No animals will be housed in the open yard over winter.

Waste to be disposed of: 180m³ slurry from existing, plus 36m³ from proposed = 240m³. Storage in 2 slatted tanks and proposed manure pit. Effluent tank and animal housing areas hold manure. Capacity: existing 180m³, proposed manure pit 178m³, effluent tank 36m³, creep 28m³, sheep shed 34m³ (up to 0.6m depth).

Length of storage time possible: existing: 18 weeks for housed animals, some animals outwintered at <1 unit per ha; proposed: 18 weeks plus 2 weeks for all animals and new sheep flock.

Organic rules require solid floor area to be a minimum of 50% v slatted area; hence requirement for cubicles and calf creep.

Disposal of slurry will be on grassland, by injection. Manure will be turned in the pit then spread on land.

The number of animals to be housed in the outfarm at Elfleet, Newtowncashel:

Cattle:

0 cows,

0 sucklers,

19 head of cattle 450kg,

1 head of cattle 250kg,

7 calves.

Sheep – 0

309m³ of slurry storage in 4 bay double tank in slatted shed, and 90m³ of manure in loose cattle shed.

The applicant's stocking rate is 85kgN/ha, well within 170kg/ha and he could outwinter livestock at 1 Lu /ha, however all stock are housed for the 18 week winter closed period.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decision, dated 24th April 2023, was to grant permission subject to 10 conditions, including:

2. Full surface water and effluent drainage facilities shall be provided throughout the site in accordance with the Department of Agriculture, Food and the Marine Minimum specifications for Farmyard Drainage, Concrete Yards and Roads.

3. The proposed sheds and manure pit shall be installed in accordance with the Department of Agriculture, Food and Forestry Farm Development Services S123 specifications.

5. All uncontaminated surface waters including waters from roofs and clean concrete surfaces, shall be separately collected and discharged through an impermeable system, with sealed joints, to soakpits or land drains.

Contaminated surface water shall not be allowed to enter a drain or waterway.

All effluent including soiled water shall be directed to the proposed slatted tank.

6. Where effluent is being spread on land, such operation shall not be carried out during heavy rainfall and shall not be spread

(i) within 20 metres of any drain or watercourse

(ii) within 50 metres of the flood line of any land liable to flooding,

(iii) within 100 metres of a dwelling without the prior consent of the occupant thereof,

(iv) within 50 metres of any domestic well,

(v) within 30 metres of public water supply sources,

(vi) on frozen, snow covered or waterlogged ground,

(vii) during any period between the 15th October to 15th January,

(viii) On land sloping steeply towards rivers, streams or lakes, on exposed bedrock or in situations where there is significant risk of causing water pollution.

7. Slurry shall be spread only in accordance with the usage of the land and the capacity of the land to retain, neutralise and decompose it. The rate of spreading shall be such as to prevent surface run-off, ponding or seepage into covered field drains. In accordance with CoP Code of Good Agricultural Practice for Protection of Waters Regulations SI No 378 of 2006.

8. existing land and road drainage.

9. maintenance of the public road.

10. boundary planting.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planning report, dated 21st April 2023, recommending permission, which issued, includes:

- The applicant proposes to upgrade existing agricultural facilities on site, currently in use for agricultural purposes.

3.2.3. Other Technical Reports

none

3.3. Prescribed Bodies

none

3.4. Third Party Observations

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

4.0 Planning History

none

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Longford County Development Plan 2021-2027 is the operative plan, relevant provisions include:

Supporting sustainable agriculture and food production practices that safeguard the environmental and ecological elements of our rural setting, with a particular focus on encouraging less intensive farming practices and catering for localised food markets in a bid to reduce our over-reliance on overseas food producers.

CPO 9.7 promote resource efficiency and support the shift toward a low-carbon and climate resilient economy in the agriculture, food and forestry sectors.

Agriculture remains a vital sector to the economy of Longford and its social fabric.

Notwithstanding decline in direct employment, agriculture remains a significant sector and catalyst for a number of indirect, agri-food related jobs in the County and the wider region, in relation to the provision of feedstores, livestock marts, meat and

dairy processing plants, agriculture machinery sales and maintenance and animal welfare amongst many other indirect employment sources,

CPO 9.17 - Facilitate the development of environmentally sustainable agricultural activities, whereby natural waters and watercourses, wildlife habitats, conservation areas and areas of ecological importance and other environmental assets are protected from the threat of pollution, and where development does not impinge on the visual amenity of the countryside.

Natural Heritage – the plan sets out policy objectives to protect the natural heritage and biodiversity of the county, including special protection areas (SPAs), special areas of conservation (SACs), natural heritage areas and proposed natural heritage areas.

Groundwater protection - the plan sets out policy objectives to protect groundwater.

5.2. EPA Pollution Impact Potential Mapping

- 5.2.1. EPA mapping under the heading Pressures & Activities include Pollution Impact Potential Mapping (PIP) for Nitrates and Phosphorus, and indicates low risk for Nitrate.

5.3. Natural Heritage Designations

- 5.3.1. The Natura sites nearest the site are Fortwilliam Turlough SAC (site code 000448) located c1.5km straight line distance from the subject site and Lough Ree SAC (site code 000440) and Lough Ree SPA (site code 004064) (located c2km straight line distance from the subject site. Landspreading areas include lands which adjoin Lough Ree and are within the SAC/SPA; and other nearby lands.

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

6.1.1. The third party appeal grounds include:

Board Pleanála's (3) legal functions:

1 The Planning Acts

It must examine the application to ascertain if the contents comply with the planning regulations.

It must assess the merits of the application.

2 The Environmental Impact Assessment Directive

Article 4(4) provisions listed

The Board is required to form and record a view as to the environmental impacts of the development considering the EIA report, the views of the public concerned and applying its own expertise, or, if no EIAR is submitted, to screen the development for EIA.

3 An Bord Pleanála is the competent authority having responsibility under the Habitats Directive.

The legal case for screening AG Sharpson in the opinion 259/11 Sweetman & Others v An Bord Pleanála is referred to. Paragraph 47 is quoted.

This is implemented into Irish law by Finlay Geoghegan J in Kelly v An Bord Pleanála (2014 IEHC 400). Paragraphs 26 and 47 are quoted.

26 There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.177U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49: 47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect;

The threshold Appropriate Assessment must pass in this context is explained in paragraph 44 of CJEU Case 258/11.

So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned.

This is a strict standard and An Bord Pleanála does not have legal jurisdiction to give permission if it is not met.

Additional grounds:

The development is about 250m from Fortwilliam Turlough SAC (site code:IE0000448): the turlough is downgradient.

There are no maps showing the spreadlands relative to the SAC. The planner had no regard for appellants submission which quotes from decisions of the CJEU and Irish High Court.

Some of the foregoing quotations are repeated and extracts from CJEU case 258/11 are quoted to the effect that for AA screening 'it cannot have lacunae'.

Extracts from CJEU cases 293/17 and 294/17 are quoted. Appellant's interpretation of these is that the spreading of slurry from the new tank is part of the development and must be assessed under the requirement of Article 6.3 of the Habitats Directive.

An AA Screening report was submitted. It states that the development is about 1.8km from Fortwilliam Turlough SAC. It should have said from the buildings. The site includes the spreadlands which are not detailed. The turlough is downgradient of the lands in the ownership of the applicant.

The turlough is downgradient from the lands in the ownership of the developer. There does not appear to be any other exit for the water in this land other than into this turlough. This appears to be a priority habitat.

Reason for conditions 2 and 3 and condition 6: In the interest of clarity, public health and environmental protection'; and 'In the interest of the public safety, environmental protection and the proper planning and sustainable development of the area'; are quoted. The protection of the priority Habitat should have figured prominently.

Condition 6, referring to ground sloping towards rivers, streams and lakes; per maps of ground sloping steeply towards lakes, can only be interpreted as excluding Fortwilliam Turlough and Lough Ree SAC. Measures intended to protect the SACs Fortwilliam Turlough SAC, are mitigation and cannot be used at screening stage. The PA has failed to carry out its duties. They request ABP to award their outgoings in this matter, 240 euros.

6.2. Applicant Response

6.2.1. The applicant has not responded to the grounds of appeal.

6.3. Planning Authority Response

6.3.1. The Planning Authority has not responded to the grounds of appeal.

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, groundwater protection and other issues 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:

the construction of a cubicle shed with creep areas for cattle, a sheep shed, a roofed manure pit, new silage pit and ancillary works (concrete yards, effluent tank etc.) in an existing farmyard area using existing farm road / public road entrance.

7.2.3. A report of screening for AA was submitted.

- 7.2.4. The planning authority carried out a preliminary screening for appropriate assessment and arrived at a conclusion of no potential significant effects.
- 7.2.5. Grounds of appeal – the substance of the grounds of appeal is that appropriate assessment has not been carried out in accordance with the requirements of the Directive.
- 7.3. Screening for Appropriate Assessment
- 7.3.1. The nearest Natura sites are Fortwilliam Turlough SAC (site code 000448) located c1.5km straight line distance from the subject site and Lough Ree SAC (and SPA) (site code 000440) located c2km straight line distance from the subject site.
- 7.3.2. Landspreading of effluent associated with the proposed development will take place at six locations: at land adjoining the site, at two locations adjoining Lough Ree at Cashel, at a location at Cashel farther from the lake, nearby at Elfleet, and at Carrigeens to the north-east. Some of these lands are in pasture and some are wooded. Two of the landspreading areas at Cashel are mainly within the SAC.
- 7.3.3. Site specific conservation objectives have been developed for Fortwilliam Turlough SAC (site code 000448) which could be summarised as, to restore and or maintain the favourable conservation condition of the qualifying interest habitats and species.

Turloughs

The site synopsis includes:

It is an oligotrophic site, which indicates that it has escaped significant nutrient input but renders it sensitive to damage should this occur.

- 7.3.4. Site specific conservation objectives have been developed for Lough Ree SAC (site code 000440) which could be summarised as, to restore and or maintain the favourable conservation condition of the qualifying interest habitats and species:

Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation

Semi-natural dry grasslands and scrubland facies on calcareous substrates

(Festuco-Brometalia) (* important orchid sites)

Active raised bogs

Degraded raised bogs still capable of natural regeneration

Alkaline fens

Limestone pavements

Bog woodland

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*

Otter.

7.3.5. The conservation objectives for Lough Ree SPA 004064 are:

To maintain or restore the favourable conservation condition of the wetland habitat at Lough Ree SPA as a resource for the regularly-occurring migratory waterbirds that utilise it; and

To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA;

Little Grebe

Whooper Swan

Wigeon

Teal

Mallard

Shoveler

Tufted Duck

Common Scoter

Goldeneye

Coot

Golden Plover

Lapwing

Common Tern

Wetland and Waterbirds

7.3.6. The proposed development is the construction of a cubicle shed with creep areas for cattle, a sheep shed, a roofed manure pit, new silage pit and ancillary works (concrete yards, effluent tank etc.) in an existing farmyard area, using existing farm road / public road entrance.

7.3.7. The landspreading areas identified on aerial survey mapping include lands within the SAC at Cashel near the shore of Lough Ree, nearby lands at Elfleet which are

mainly woods, a pasture field at Cashel, fields in pasture at Carrigeens and the lands adjacent to the site. Most of the lands are not indicated as of particular concern for either phosphorus or nitrogen in PIP mapping.

Of the landspreading lands at Cashel, some areas are within the SAC, some areas are of extreme groundwater vulnerability, some areas are indicated on the conservation objectives for the SAC as qualifying interest limestone pavement (identified on map 8 of the SAC), and the shoreline is identified as within the commuting buffer for otter, (on map 9 of the SAC). An ecological survey of the habitats within the landspreading area within the SAC has not been provided. The proposed development could involve loss of existing habitat.

7.3.8. Screening summary matrix

| European Site | Qualifying Interest features and Conservation Objectives: | Connections to site and issues that require examination in stage 1 Screening for AA |
|-----------------------------------|--|---|
| Lough Ree SAC (site code 000440), | <p>Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation</p> <p>Semi-natural dry grasslands and scrubland facies on calcareous substrates (important orchid sites)</p> <p>Active raised bogs</p> <p>Degraded raised bogs still capable of natural regeneration</p> <p>Alkaline fens</p> <p>Limestone pavements</p> <p>Bog woodland</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i></p> <p>Otter</p> | <p><u>During Construction</u></p> <p>The site drains to Lough Ree. There is potential for indirect effects through surface water /groundwater.</p> <p><u>During Operation</u></p> <p>The farmyard drains to the lake.</p> <p>Landspreading areas include:</p> <p>areas within the SAC,</p> <p>limestone pavement,</p> <p>within the commuting buffer for otter,</p> <p>There is potential for indirect effects from habitat removal; disturbance; and on water quality via groundwater and surface water.</p> |
| Lough Ree SPA (site code 004064) | <p>Little Grebe</p> <p>Whooper Swan</p> <p>Wigeon</p> <p>Teal</p> <p>Mallard</p> | <p><u>During Construction</u></p> <p>The site drains to Lough Ree. There is potential for indirect effects through surface water /groundwater.</p> <p><u>During Operation</u></p> |

| | | |
|---|--|---|
| | Shoveler Tufted Duck Common Scoter Goldeneye Coot Golden Plover Lapwing Common Tern Wetland and Waterbirds | The farmyard drains to the lake. Landspreading areas include: areas within the SPA. There is potential for indirect effects from habitat removal; disturbance; and on water quality via groundwater and surface water. |
| Fortwilliam Turlough SAC (site code 000448) | Turlough | <u>During Operation</u> Landspreading areas include: lands at Carrigeens uphill of Fortwilliam Turlough, c 1.5km away. There is potential for indirect effects on water quality via groundwater and surface water. |

7.3.14. I am satisfied that no other protected sites need to be considered.

7.3.15. Construction Phase Impacts

Potential Indirect Impact

7.3.16. The site of the proposed development is removed from protected sites.

Nevertheless, in the absence of mitigation, there is potential for significant indirect effects on the qualifying interest and special conservation interests of Lough Ree SPA and Lough Ree SAC. This would need to be examined in a NIS.

7.3.17. Operational Phase Impacts

Potential Indirect Impact

7.3.18. In the absence of mitigation there is potential for impact on surface water and groundwater from activities at the farmyard and hence potential for significant indirect effects on protected downstream sites.

- 7.3.19. In the absence of mitigation there is potential for significant indirect effects on limestone pavements, a qualifying interest of the SAC, located within the lands identified as landspreading area.
- 7.3.20. In the absence of mitigation there is potential for significant indirect effects on otter, a qualifying interest of the SAC, as the landspreading area is within the commuting buffer for otter.
- 7.3.21. 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.
- 7.3.22. Conclusion of Screening
- 7.3.23. There is potential for impact during construction and operation and for significant effects on protected sites, such that Appropriate Assessment stage 2, is required.
- 7.3.24. The applicant should be requested to provide a NIS, a detailed construction management plan and a detailed plan for landspreading.

7.4. Principle of Development

- 7.4.1. The Longford County Development Plan 2021-2027 is generally supportive of sustainable agriculture. This is a rural, agricultural area. The proposed development is acceptable in principle.

7.5. Groundwater Protection

- 7.5.1. Landspreading areas include lands identified on Geological Survey of Ireland mapping, as having extreme groundwater vulnerability, with rock near the surface or karst. The EPA groundwater response recommendation for landspreading in such areas is that the depth of soil should be established, and in order to be suitable for landspreading, should have a consistent minimum thickness of 1m of soil and subsoil over locally important 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.
- 7.5.2. The applicant should be requested to identify all proposed land banks within areas of regionally important, locally important and poor aquifers, with a vulnerability rating of

extreme (where the groundwater protection responses will be R3² – for regionally important aquifers, not generally acceptable, unless consistent minimum thickness of 2m of soil and subsoil can be demonstrated; and R3¹ – for locally important and poor aquifers, not generally acceptable, unless consistent minimum thickness of 1m of soil and subsoil can be demonstrated). The applicant should be required to demonstrate by way of a report, with maps and photographs, which show the trial holes and their locations, 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. The applicant is required to demonstrate that adequate lands are available for landspreading.

7.6. Other issues

- 7.6.1. The planning authority have attached conditions to their decision, including condition no. 6 which establishes set back distances for landspreading from various features. These include distances for water supply sources, which establish a greater setback from domestic wells than public water supply sources; and a distance of 100m from a dwelling except with the occupant's consent. It is not clear where these set-back distances originated, in my opinion they are not appropriate.

8.0 Recommendation

- 8.1.1. Since the applicant was not previously requested to provide a NIS or information on groundwater impact I consider it appropriate for the Board to request the applicant to submit a NIS accompanied by a detailed construction management plan and a detailed plan for landspreading; and to submit the information on groundwater protection set out in paragraph 7.5.2.

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

1st February 2024

Appendices:

Appendix 1

| | | | |
|---|---|------------|--------------------------------|
| An Bord Pleanála Case Reference | 316936 | | |
| Proposed Development Summary | Construct a cubicle shed with creep areas for cattle, a sheep shed, a roofed manure pit, new silage pit and ancillary works (concrete yards, effluent tank etc.) in an existing farmyard area, using existing farm road / public road entrance. | | |
| Development Address | Greenhall Upper, Newtowncashel, Co. Longford | | |
| 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 |

Appendix 2 Photographs

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

Appendix 4 Catchments.ie - Pollution Impact Potential Mapping (PIP) for Nitrates, extracts

Appendix 5 Groundwater Protection Responses to the Landspreading of Organic Wastes, EPA.