



An
Bord
Pleanála

Inspector's Report

ABP-317142-23

Development	Demolition of buildings and construction of cattle house, underground slurry tanks with associated site works
Location	Ardcullen, Ballyduff, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	23/73
Applicant(s)	Sean McKenna
Type of Application	Planning Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Peter Sweetman
Observer(s)	None
Date of Site Inspection	18 th January 2024
Inspector	Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.49 hectares and is located within the townland of Ardculen, County Kerry, which is located approximately 2km north of the village of Ballyduff and 7km south of the town of Ballybunion. The site comprises of an existing established agricultural farmyard. The farmyard is located approximately 500 metres south of the River Feale which forms part of the Lower River Shannon Special Area of Conservation (SAC).
- 1.2. Access to the site is via a single carriageway local road. The site is bounded by the local road and mature hedgerow along the northern boundary, an existing dwelling to the west and agricultural lands to the south and east. An existing watercourse is located along the northern boundary of the site.

2.0 Proposed Development

- 2.1. Planning permission is sought for the demolition of a machinery store and pump house and the construction of a slatted cubicle house and bull house extension. Permission is also sought for an underground slurry tank with a connection to an existing slurry tank in the slatted house as well as an extension to the existing slurry tank.
- 2.2. The cubicle house and bull house extension will be located on the eastern elevation of the existing cubicle house. The extension will measure 254sqm and is proposed to be built to a ridge height of 7.79 metres, matching the ridge height of the existing slatted cubicle house. The existing machinery house and pump house to be demolished measure 85sqm.
- 2.3. All roofwater is proposed to be disposed of to a watercourse along the roadside boundary. All soiled water within the yard will be collected in the underground slurry tanks.

Planning Authority Decision

2.4. Decision

Kerry County Council (The Planning Authority) decided to grant permission by Order dated 28th April 2023, subject to 6 no. mainly standard conditions. No financial contribution was attached.

2.5. Planning Authority Reports

Planning Reports

- Area Planner's report assessed the development in terms of appropriate assessment, EIA preliminary examination and visual impact. Further information was requested in relation to construction and demolition waste. Final report recommended a grant of permission.

Other Technical Reports

- Environment Section (report dated 26th April 2023 – No objection subject to conditions.
- Archaeology Officer (report dated 7th February 2023) – No mitigation required.
- Biodiversity Officer (report dated 20th March 2023) – No impact envisaged on European Sites.

2.6. Prescribed Bodies

None

2.7. Third Party Observations

A third party submission was received from Mr. Peter Sweetman who raised concerns with the disposal of slurry and considered that an appropriate assessment was required for the proposed development.

3.0 Relevant Planning History

PA Ref. 07/1546

Patrick McKenna granted permission to construct an agricultural shed and slurry tank.

4.0 Policy Context

4.1. Development Plan

- Kerry County Development Plan 2022-2028

Objective KCDP 9-39

Support and facilitate the thematic objectives outlined in “Our Rural Futures”, rural development policy 2021-2025, to strengthen economic activity and employment in rural areas.

Objective KCDP 9-52

Support and facilitate the implementation of the strategic objectives of Food Vision 2030 – A World Leader in Sustainable Food Systems to sustainably develop the agricultural and food sectors that contribute enormously to the economic development of rural areas.

Objective KCDP 9-53

Facilitate and support the development of sustainable agricultural practices and facilities within the county, subject to normal planning and environmental criteria and the development management standards contained in Volume 6 of this plan.

Objective KCDP 9-55

Facilitate the sustainable modernisation of agriculture and to encourage best practice in the design and construction of new agricultural buildings and installations to protect the environment, natural and built heritage and residential amenity.

Objective KCDP 9-56

Ensure agricultural waste is managed and disposed in a safe, efficient and sustainable manner having regard to the environment and in full compliance with the European

Communities Good Agricultural Practice for the Protection of Waters Regulations (2010-2020) and any subsequent updates and relevant best practice guidelines.

Objective KCDP 9-62

Ensure the economic benefits associated with promoting the County's agri-food sector are balanced with due consideration for the conservation and protection of the rural environment.

4.2. National Policy

- Climate Action Plan 2023 (as updated)
- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030
- Department of Rural and Community Development's Our Rural Future: Rural Development Policy 2021-2025
- Department of Agriculture, Food and the Marine's Food Vision 2030
- Department of Agriculture, Food and the Marine's Ag Climatise A Roadmap towards Climate Neutrality
- Nitrates Action Programme (NAP) 2022-2025

4.3. Regional Policy

- Regional Spatial and Economic Strategy for the Southern Region

4.4. Other Guidance

- European Commission's 'Farming for Natura 2000, Guidance on how to support Natura 2000 farming systems to achieve conservation objectives, based on Member States good practice experiences (2018)

4.5. Natural Heritage Designations

The subject site is not located within any designated site. The nearest designated sites are the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165), which is located approximately 500 metres north of the site, and the Cashen River Estuary proposed Natural Heritage Area (pNHA), which is located approximately 350 metres north of the site.

4.6. Environmental Impact Assessment (EIA) Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a preliminary examination or screening determination. Refer to Appendix 1.

5.0 The Appeal

5.1. Grounds of Appeal

A Third-Party Appeal was lodged to the Board on 17th May 2023 opposing the Planning Authority's (PA) decision. The grounds of appeal can be summarised as follows:

- Measures intended to avoid or reduce the harmful effects of the plan or project have been taken into account by the planning authority at screening stage.
- CJEU Judgement referenced which states that the grazing of cattle and the application of fertilisers may be classified as a project.
- Buildings are 30 metres from the Lower River Shannon SAC.
- Not possible to assess the spread lands as they are not included in the application.

5.2. Applicant Response

The Applicant addresses the grounds of appeal as follows:

- The buildings of the application are approximately 500 metres from the SAC. Map provided showing distance as 517.1 metres.
- The nature of the proposed development is to ensure compliance with mandatory storage periods for slurry storage in accordance with Teagasc requirements. County Kerry requires 18 weeks storage.
- The proposed slatted cubicle house is to increase standards of animal husbandry on the farm.

- The proposed bull house extension is required to implement safer practices on the farm, regarding the housing, handling and feeding of the bulls during the winter months.
- The proposed development will improve the environmental and safety practices on the farm and will reduce amount of time and manual labour required.

5.3. **Planning Authority Response**

None

5.4. **Observations**

None

6.0 **Assessment**

- 6.1. The proposed development is within an existing established agricultural farmyard. Having regard to objectives KCDP 9-39, KCDP 9-52, KCDP 9-53 and KCDP 9-55, I consider the proposed development to be in accordance with the provisions of the Kerry County Development Plan 2022-2028 and, therefore, is acceptable in principle.
- 6.2. Having examined the application details and all other documentation on file, after an inspection of the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issue on this appeal relates to potential impacts on European Sites.

Appropriate Assessment (AA) Screening

Compliance with Article 6(3) of the Habitats Directive

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

- 6.3. The subject site is not located within any European Site. I note that within the Appellant's grounds of appeal it is stated that the buildings of the application are "*about 30 metres from this SAC*". However, I note that this is not the case. The subject site

and farm buildings are located approximately 500 metres from the Lower River Shannon SAC (Site Code 002165). I note that the Planning Authority (PA) undertook a screening for AA and concluded that there would be no potential for significant effects on any European Site.

6.4. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on the qualifying interests (QI) of European sites:

- Construction related habitat and species disturbance and fragmentation as a result of construction related surface water pollution.
- Construction related habitat and species disturbance as a result of construction related airborne pollution.
- Operational related habitat and species disturbance and fragmentation as a result of surface water pollution.

European Sites

6.5. A summary of European Sites within a possible zone of influence of the development is presented in Table 1 below. Where a possible connection between the development and a European Site has been identified, these sites are examined in more detail.

Table 1: Summary Table of European Sites within a possible zone of influence of the development

European Site	Qualifying Interest	Distance from development	Connections	Considered further in screening
Lower River Shannon SAC (002165)	21 QIs https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000101.pdf	Approximately 500 metres north of the subject site.	Yes, potential indirect hydrological pathway.	Yes
Kerry Head SPA (004189)	Fulmar (<i>Fulmarus glacialis</i>) [A009] Chough (<i>Pyrrhocorax pyrrhocorax</i>) [A346]	Approximately 4.5km west of the subject site.	No, due to distance pathway is significantly remote. No significant ex-situ effects likely	No

			due to site and surrounding lands not being suitable for fulmar or chough.	
River Shannon and River Fergus Estuaries SPA (004077)	22 QIs https://www.npws.ie/site/s/default/files/protected-sites/conservation_objectives/CO004077.pdf	Approximately 12km north of the subject site.	No, due to distance pathway is significantly remote. No ex-situ effects likely.	No

Identification of likely significant effects

6.6. The Qualifying Interests (QI) of the Lower River Shannon SAC (002165) are the following:

- Sandbanks which are slightly covered by sea water all the time [1110]
- Estuaries [1130]
- Mudflats and sandflats not covered by seawater at low tide [1140]
- Coastal lagoons [1150]
- Large shallow inlets and bays [1160]
- Reefs [1170]
- Perennial vegetation of stony banks [1220]
- Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]
- Salicornia and other annuals colonising mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
- *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]
- *Petromyzon marinus* (Sea Lamprey) [1095]
- *Lampetra planeri* (Brook Lamprey) [1096]

- *Lampetra fluviatilis* (River Lamprey) [1099]
- *Salmo salar* (Salmon) [1106]
- *Tursiops truncatus* (Common Bottlenose Dolphin) [1349]
- *Lutra lutra* (Otter) [1355]

- 6.7. The Conservation Objective of this site is to restore the favourable conservation condition of QIs 1029, 1095, 1106, 1150, 1330, 1355, 1410 and 91E0, and to maintain the favourable conservation condition of QIs 1096, 1099, 1110, 1130, 1140, 1160, 1170, 1220, 1230, 1310, 1349, 3260 and 6410.
- 6.8. A watercourse is located along the roadside boundary of the site which connects downstream to the River Feale. I note that the proposed development seeks to dispose of roof water via a clean water outlet to this watercourse. All soiled water within the yard is to be disposed of via the underground slurry tanks. The construction phase will result in short term construction related emissions typical of an agricultural development. Having regard to the above, I am satisfied that the development would not likely result in a direct or indirect effect on the conservation objectives of the European Site in terms of species or habitat fragmentation or disturbance. Furthermore, I am satisfied that the development would not likely result in any ex-situ effects on any species, having regard to the established use of the site and distance to European Sites.
- 6.9. I note the Appellant's comments regarding the issue of landspreading. A reference is made to 2 no. CJEU cases where it was found that grazing of cattle and application of fertilisers may be classified as a project under Article 6(3) of the Habitats Directive.
- 6.10. With regards to the slurry tanks, I note that these will be designed and sealed in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended. Furthermore, I note that the application of fertilisers are also regulated under the European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended. The regulations contain specific measures to protect surface waters and groundwater from nutrient pollution arising from agricultural sources. This includes, inter alia, no land spreading within 5-10 metres of a watercourse following the opening of the spreading period (16th January for County Kerry). I note that an Appropriate Assessment was completed as part of Ireland's fifth Nitrates Action Programme (NAP) 2022-2025, which is given effect by

the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022, and concluded that the programme would not adversely affect the integrity of any European Site.

- 6.11. Notwithstanding this, the Board should note that the carrying out of landspreading does not form part of this application.

Mitigation Measures

- 6.12. I note the Appellant states that the PA took into account measures intended to avoid or reduce the harmful effects on the European Site, however, does not specify what these measures are. The Board should note that I have not taken into account any measures intended to reduce or avoid any harmful effect on the Lower River Shannon SAC, or any other European Site. The PA's request, under condition 3 of their notification to grant, is in relation to compliance with the Good Agricultural Practice regulations which is a standard requirement for such development and is not a measure designed to mitigate any potential effect on the SAC.

Screening Conclusion

- 6.13. Having regard to the nature and scale of the proposed development, to the existing established use on site and to the separation distance from the European Site, I consider that the proposed development, individually or in-combination with other plans or projects, would not be likely to have a significant effect on the Lower River Shannon SAC, or any other European Site, in view of the said sites' conservation objectives. An appropriate assessment is not, therefore, required.

7.0 Recommendation

- 7.1. I recommend that permission is granted for the following reasons and considerations.

8.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development within an established agricultural farmyard, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenity of the area and would be acceptable in terms of public health and

environmental sustainability. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 3rd April 2023, 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>Reason: In the interest of clarity.</p>
2.	<p>The use of the proposed buildings shall be for agricultural purposes only.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>All external finishes shall match those of the existing adjoining structures.</p> <p>Reason: In the interest of visual amenity.</p>
4.	<p>Prior to the commencement of development, a Resource Waste Management Plan (RWMP), as set out in the Environmental Protection Agency's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021), shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.</p>

	Reason: In the interest of sustainable waste management.
5.	<p>The proposed development shall be designed and constructed in accordance with the Department of Agriculture, Food and the Marine specifications as per the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2022 (S.I 113 of 2022).</p> <p>Reason: In the interest of public health and residential amenity.</p>
6.	<p>Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard:</p> <p>(a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and</p> <p>(b) all soiled waters shall be directed to a storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.</p> <p>Reason: In the interest of environmental protection and public health.</p>
7.	<p>The northern roadside boundary shall be retained in full and shall be suitably strengthened with native hedge species which shall be agreed in writing with the planning authority prior to commencement of the development. The planting shall be carried out in accordance with the said details.</p> <p>Reason: In the interest of visual amenity and protection of biodiversity.</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.

Gary Farrelly
Planning Inspector

20th February 2024

Appendix 1 - EIA Pre-Screening

An Bord Pleanála Case Reference	317142-23		
Proposed Development Summary	Demolition of machinery store and pumphouse, construction of slatted cubicle house and bull house extension with associated underground slurry tanks		
Development Address	Ardcullen, Ballyduff, County Kerry		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		Yes	X
		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	X		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)
No	X		No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

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

Inspector: _____ Date: _____