



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317418-23

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<b>Development</b>	Extension to cattle house and construction of hay shed. Retention of storage shed, retention of 2 no. slatted cubicle house with slurry tank with associated works
<b>Location</b>	Castleshannon, Causeway, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	23/72
<b>Applicant(s)</b>	Noel O'Driscoll
<b>Type of Application</b>	Retention Permission / Planning Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Mr. Peter Sweetman
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> January 2024
<b>Inspector</b>	Gary Farrelly

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1.19 hectares and is located within the townland of Castleshannon, Causeway, County Kerry, which is located approximately 4km north of the village of Ballyheigue. The site comprises of an existing established agricultural farm complex. Access to the site is via a local road. The site is bounded by agricultural lands to the north, west and south of the site. An existing dwelling is located to the east of the site.
- 1.2. The subject site is located within a Visually Sensitive Area, as designated under the Kerry County Development Plan 2022-2028. The local road to the east of the site is designated as an area for Views and Prospects under the said Plan.

## 2.0 Proposed Development

- 2.1. Permission is sought for the retention of the following:
  - Slatted cow cubicle house and associated underground slurry tank (*outlined as Building No. 11 on the submitted site layout plan*). This measures 334sqm and has a ridge height of 7.05 metres.
  - Machinery storage shed (*outlined as Building No. 12 of the submitted site layout plan*). This measures 167sqm and has a ridge height of 5.54 metres.
  - The retention and completion of a slatted cubicle house and associated underground slurry tank (*outlined as Building No. 10 on the submitted site layout plan*). This will measure 324sqm and will have a ridge height of 7.63 metres.
- 2.2. Permission is sought for the following:
  - A hay/straw storage shed (*outlined as Building No. 13 on the submitted site layout plan*). This will measure 717sqm and have a ridge height of 8.51 metres.
  - Demolition of a store along the western boundary of the site (*Building No. 1*), the reroofing of an existing cubicle house (*Building No. 2*), the extension of this cubicle house to be used as an easy feed straw bedded cattle house (*Building No. 14*). The existing store for demolition measures 105sqm and has a ridge

height of 3.87 metres. The proposed structure will measure 747sqm and will have a ridge height of 8 metres.

- 2.3. Roof water is proposed to be piped to a watercourse to the northwest of the site and to a watercourse along the roadside.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

Kerry County Council (The Planning Authority) decided to grant permission by Order dated 31<sup>st</sup> May 2023, subject to 11 no. mainly standard conditions including a financial contribution and landscape screening to the site boundaries.

### 3.2. **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 wording of the application, the reduction in scale of the proposed hay shed and preparation of a waste management plan. In response, the height of the structure was reduced from 9.43 metres to 8.51 metres and overall scale reduced from 1,025sqm to 717sqm. Final report recommended a grant of permission.

#### Other Technical Reports

- Environmental Assessment Unit (EAU) (report dated 13<sup>th</sup> February 2023) – No objection, development not likely to have a significant effect on any European Site. EIA not required.
- Environment Section (report dated 29<sup>th</sup> May 2023) – No objection subject to waste management plan.
- Archaeology (report dated 7<sup>th</sup> February 2023) – No mitigation required.

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

A third party submission was received from Mr. Peter Sweetman who raised concerns in relation to AA, with the disposal of slurry, compliance with the water framework Directive and stated that the PA was the competent authority for EIA and appropriate assessment.

## 4.0 Planning History

### PA Ref. 10/1031

Permission granted for the construction of a loose cattle house, machinery shed and slatted unit.

### PA Ref. 06/3509

Permission granted for the construction of an easy feed loose cattle shed, silage base extension and slurry tank.

### PA Ref. 04/2251

Permission granted for the construction of a slatted cattle unit and conversion of a roofed silo to calving pens.

## 5.0 Policy Context

### 5.1. 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.

Objective KCDP 11-77

Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

Objective KCDP 11-78

Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.

### Objective KCDP 11-79

Preserve the views and prospects as defined on Maps contained in Volume 4.

### Objective KCDP 11-81

Prohibit developments that have a material effect on views designated in this plan from the public road or greenways towards scenic features and/or public areas.

## 5.2. **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

## 5.3. **Regional Policy**

- Regional Spatial and Economic Strategy for the Southern Region

## 5.4. **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)

## 5.5. **Natural Heritage Designations**

The subject site is not located within any designated site. The nearest designated sites are the Kerry Head Special Protection Area (SPA) (Site Code 004189), which is located approximately 1km north of the subject site, and the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165), which is located approximately 1.5km north of the subject site.

## 5.6. Environmental Impact Assessment (EIA)

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 assessment. Refer to Appendix 1.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A third party appeal was lodged to the Board on 21<sup>st</sup> June 2023 opposing the Planning Authority's (PA) decision. The grounds of appeal can be summarised as follows:

- Questions how PA considered that unauthorised slurry tank and landspreading would have no predicted impact on the European Sites.
- The PA's conclusion that there will be no significant effects is not the test. The test is whether there may be such an effect.
- Not possible for ABP to grant permission as appropriate assessment must contain complete, precise and definitive findings.

### 6.2. Applicant Response

The Applicant addresses the grounds of appeal as follows:

- The proposed development is located outside the Lower River Shannon SAC and Kerry Head SPA.
- Nitrates Regulations (SI No. 113/2022) governs and regulates agricultural practices for the protection of waters and the proposed development is required to comply with mandatory storage periods for slurry storage and slurry application.
- There is a requirement to have storage for slurry for 18 weeks with an advisory to have extra storage available above the 18 week minimum requirement. The

proposed development will abide by the requirements of the Nitrates regulations.

- The applicant has an average of 134 cattle and farms 67.25 hectares. The application rate of slurry per year is approximately 130kg of nitrogen per hectare which is below the prescribed 170kg threshold. Letter provided from Teagasc.
- The cubicle house will increase standards of animal husbandry on the farm.
- The proposed development is for an extension to an existing farmyard which specialises in tillage and beef cattle.

### 6.3. Observations

None

## 7.0 Assessment

- 7.1. The proposed development is within an existing established agricultural farmyard. I note that the subject site is located within a Visually Sensitive Area under the Kerry County Development Plan 2022-2028 (CDP) and is located next to the public road where there are designated Views and Prospects to the northwest under the CDP. However, having regard to the established nature of the existing farmyard and to the scale and height of the proposed and retained developments and to their location within the curtilage of the existing farmyard, I am satisfied that the development will not result in an adverse impact on the visual or scenic amenity of the area. Therefore, I consider the development is in accordance with objectives KCDP 11-77, KCDP 11-78, KCDP 11-79 and KCDP 11-81 of the CDP. Furthermore, I consider the development in accordance with objectives KCDP 9-39, KCDP 9-52, KCDP 9-53 and KCDP 9-55 of the CDP and therefore I am satisfied with the principle of the development.
- 7.2. 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

- 7.3. 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

- 7.4. I note that the Appellant questions the appropriate assessment screening carried out by the Planning Authority (PA) in terms of the test applied, noting that AA must contain complete, precise and definitive findings and conclusions. I note that the PA and Biodiversity Officer of the EAU undertook a detailed screening for AA and concluded that there would be no potential for significant effects on any European Site.
- 7.5. The subject site is not located within any European Site. The subject site is located approximately 1km south of the Kerry Head SPA (Site Code 004189) and 1.5km south of the Lower River Shannon SAC (Site Code 002165).
- 7.6. 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 the 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

- 7.7. 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 <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objects/CO000101.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objects/CO000101.pdf</a>	Approximately 1.4 kilometres north of the site.	Yes, potential indirect hydrological connection.	Yes
Kerry Head SPA (004189)	Fulmar ( <i>Fulmarus glacialis</i> ) [A009] Chough ( <i>Pyrrhocorax pyrrhocorax</i> ) [A346]	Approximately 1km north of the subject site.	Yes, potential indirect hydrological connection.	Yes
Tralee Bay Complex SPA (004188)	23 QIs <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objects/CO004188.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objects/CO004188.pdf</a>	Approximately 4.5km south of site.	No, due to distance pathway is significantly remote. No significant ex-situ effects likely.	No
Akeragh, Banna and Barrow Harbour SAC (000332)	9 QIs <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objects/CO000332.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objects/CO000332.pdf</a>	Approximately 4.5km south of site.	No, due to distance pathway is significantly remote.	No

#### Identification of likely significant effects

7.8. 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 maritimae*) [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]

7.9. 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.

7.10. The Qualifying Interests (QI) of the Kerry Head SPA (004189) are the following:

- Fulmar (*Fulmarus glacialis*) [A009]
- Chough (*Pyrrhocorax pyrrhocorax*) [A346]

The Conservation Objective of this site is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests.

- 7.11. I note that the development seeks to dispose of roof water to a watercourse along the roadside boundary and to a watercourse to the northwest of the site. All effluent from the cattle houses will 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, having regard to the characteristics of the subject site, i.e. an established farmyard, and to the nature of surrounding lands, I consider that they are not attractive or suitable for Fulmar or Chough. I am satisfied that the development would not likely result in any significant ex-situ effects on any species.
- 7.12. I note the Appellant questions how the slurry tank and landspreading can mitigate the effect on the European Sites. 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 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 (16<sup>th</sup> 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.
- 7.13. Notwithstanding this, the Board should note that the carrying out of landspreading does not form part of this application.

#### Mitigation Measures

- 7.14. The Board should note that I have not taken into account any measures intended to reduce or avoid any harmful effect on the Kerry Head SPA, Lower River Shannon SAC, or any other European Site.

## Screening Conclusion

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

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

Having regard to the nature and scale of the development within an established agricultural farmyard, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the visual or scenic amenity of the area and would be acceptable in terms of public health and environmental sustainability. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The development shall be retained, 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 12 <sup>th</sup> April 2023 and 4 <sup>th</sup> May 2023, except as may otherwise be required in order to comply with the following conditions.  <b>Reason:</b> In the interest of clarity.
2.	The use of the retained and proposed buildings shall be for agricultural purposes only.

	<p><b>Reason:</b> In the interest of clarity.</p>
3.	<p>All external finishes shall match those of the existing adjoining structures.</p> <p><b>Reason:</b> 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> <p><b>Reason:</b> In the interest of sustainable waste management.</p>
5.	<p>The 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><b>Reason:</b> 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><b>Reason:</b> In the interest of environmental protection and public health.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within 3 months of this decision (retained development) and prior to commencement of the development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.</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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Gary Farrelly

Planning Inspector

20<sup>th</sup> February 2024

## Appendix 1 - EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	317418-23		
<b>Proposed Development Summary</b>	Construction of a hay/straw storage shed, demolition of a store and removal of roofs with extension to provide an easy feed straw bedded cattle house, retention of machinery store, retention of slatted cow cubicle house and underground slurry tank and retention and completion of a slatted cow cubicle house and underground slurry tank with associated site works		
<b>Development Address</b>	Castleshannon, Causeway, County Kerry		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		<b>Yes</b>	X
		<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>			
Yes			EIA Mandatory EIAR required
No	X		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>Conclusion</b>
No	X		No EIAR or Preliminary Examination required
Yes			Proceed to Q.4
<b>4. Has Schedule 7A information been submitted?</b>			
No			Preliminary Examination required
Yes			Screening Determination required

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_