



An
Bord
Pleanála

Inspector's Report

ABP-317425-23

Development	Erect new agricultural shed and underground slurry storage tanks.
Location	Newmill, Ramelton, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	23/50210
Applicant(s)	Paul Durning & Jake Durning
Type of Application	Permission
Planning Authority Decision	Grant, subject to 8 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Peter Sweetman
Observer(s)	None
Date of Site Inspection	20 th October 2023
Inspector	Hugh D. Morrison

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	4
3.4. Third Party Observations	4
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations	5
5.3. EIA Screening	5
6.0 The Appeal	6
6.1. Grounds of Appeal	6
6.2. Applicant Response	7
6.3. Planning Authority Response.....	7
6.4. Observations.....	7
6.5. Further Responses	7
7.0 Assessment.....	7
8.0 Recommendation.....	16
9.0 Reasons and Considerations.....	16

Appendix 1 – Form 1: EIA Pre-Screening

1.0 Site Location and Description

- 1.1. The site is located 1.9km to the south-east of Ramelton along a local road, the L-5782-1. It lies within a rural area of gently undulating countryside. This site is situated centrally within the applicant Paul Durning's land holding. An existing farm yard and several dwelling houses lie within his land holding. To the north of the farm yard lies another dwelling house, and other dwelling houses lie further to the east.
- 1.2. The site itself coincides with a 1.002-hectare field of roughly rectangular shape. It is subject to very mild downwards gradients from west to east. This field is enclosed by hedgerows and, along its southern and eastern boundaries, by a roadside embankment and wet ditch and a north flowing stream respectively. The field is presently accessed by two farm gates in the western hedgerow, and the site extends to include the existing farm lane from the local road, which serves these gates. A derelict dwelling house lies within the north-western corner of the field.

2.0 Proposed Development

- 2.1. The proposal would entail the siting of a new 7-bay cattle shed in the north-eastern corner of the site. This shed would be of rectangular form under a double pitched roof. It would comprise two rows of slatted pens, which would be served by central and side feed passages. The slatted pens would be suspended above underground tanks. The shed would be 33.8m long and 17.765m wide, and its resultant area would be 600.457 sqm. Its eaves and ridge heights would be 4.572m and 7.976m. Its gabled northern and southern ends would be formed of concrete shuttered walls and sheeted cladding. They would have double doors within them to serve the central feed passage. The long eastern and western side elevations would be open. The roof planes would extend over the side feed passages and the roof itself would be clad with sheeting.
- 2.2. The proposal would also entail the provision of a new access road from the local road to the proposed shed, which would be finished in gravel/hardcore. An alternative access road could be provided between the northern end of the existing farm laneway and the shed through the northern portion of the field.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission was granted, subject to 8 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The principle of the proposal was accepted, i.e., the provision of an agricultural building on a working farm was considered to be in order. Separation distances between the proposal and the nearest non-agricultural related dwelling house were to be sufficient to safeguard residential amenity. Proposed surface water drainage arrangements with discharge to adjacent wet ditch were considered to be satisfactory.

Further information was requested with respect to a survey of vehicle speeds on the adjoining local road, and the provision of sightlines. The applicant subsequently calculated that the 85th speed on the local road is 40 kmph and so the relevant “y” distance for the sightlines is 50m, a dimension that would lie over lands controlled by the applicant.

3.2.2. Other Technical Reports

The case planner reports that the Area Engineer raised no objection, subject to standard drainage and roadside conditions.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Besides the matters reiterated in the appellant’s grounds of appeal, the other objectors cited public health, water pollution, and access concerns. One also

questioned the accuracy of the applicants' depiction of lands within their ownership to the north-west of the site.

4.0 Planning History

- 09/40415: Demolition of rear extension and its replacement, removal of roof and insertion of first floor to dwelling house: Permitted.
- 15/50136: Extension of time to above permission until 17th March 2020.

5.0 Policy Context

5.1. Development Plan

Under the Donegal County Development Plan 2018 – 2024 (CDP), the site is shown as lying within a stronger rural area, which is of high scenic amenity.

Under Water and Environmental Services Objectives WES-O-4, 5 & 6, the PA undertakes to protect the quality of surface waters. WES-O-5 states the following:

To maintain, protect, improve and enhance the quality of surface waters and ground waters in accordance with the Programme of Measures contained within the relevant River Basin Management Plan.

5.2. Natural Heritage Designations

- Lough Swilly SAC (002287)
- Lough Swilly SPA (004075)
- Leannan River SAC (0021716)

5.3. EIA Screening

The proposal is not a project for the purpose of EIA.

6.0 The Appeal

6.1. Grounds of Appeal

Attention is drawn to the distances between the site and the nearest European sites. Attention is also drawn to Condition 4(c) attached to the PA's permission, which states that "Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the PA." Slurry would thus be generated.

The appellant resubmits his original letter of objection, which he considers the PA did not have regard to. I will summarise this letter below.

The appellant considers that the PA did not assess the application in accordance with its legal obligations, and so he requests a refund of the fee he paid in bringing this appeal.

The appellant refers to these obligations as follows:

- Under the Planning and Development Act, 2000 (as amended), the proposal must be assessed in accordance with the proper planning and sustainable development of the area.
- The PA must screen the proposal for EIA.
- Under the Habitats Directive, the PA must screen for appropriate assessment.
 - Legal cases are cited which clarify that, under Stage 1 screening, the test is whether the possibility exists of there being a significant effect on a European site: if so, Stage 2 appropriate assessment is needed.
 - Attention is drawn to Paragraph 44 of the CJEU case 258/11, i.e., an appropriate assessment "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."
 - Under the CJEU judgement in the joint cases C-29317 & 417, the proposal, including the disposal of slurry, requires to be the subject of appropriate assessment.

- Under the Water Framework Directive, proposals must adhere to its requirements.

6.2. Applicant Response

None

6.3. Planning Authority Response

While the PA relies upon the case planner's reports, which informed its decision on the current application, it does draw attention to Condition No. 4, which addresses surface water drainage, the storage of effluent, and land spreading.

6.4. Observations

None

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the Donegal County Development Plan 2018 – 2024 (CDP), relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) Visual and residential amenities,
- (iii) Access,
- (iv) Water, and
- (v) Stage 1 screening for appropriate assessment.

(i) Legalities

- 7.2. The appellant's grounds of appeal draw attention to the Board's legal obligations. Foremost amongst these are ones that stem from the Habitats Directive. The appellant is of the view that the proposal should be the subject of Stage 1 screening for appropriate assessment and Stage 2 appropriate assessment, and that these exercises should assess the land spreading that would stem from the distribution of slurry from the proposed slatted cattle shed.
- 7.3. In seeking to respond to the substantive issue raised by the appellant, I recognise that, under Section 4(1)(a) of the Act, development consisting of the use of any land for the purpose of agriculture is expressly stated to be exempted development for planning purposes. I recognise, too, the relevance of the case of Michael Hoey -v- An Bord Pleanála [2018] IEHC 701, which considered whether proper consideration had been given to the spreading of slurry when planning permission was granted for a number of pig houses. In this case, the applicant contended that¹:
- *The respondent erred by concluding the spread of slurry did not require planning permission and that the issue of slurry spread was extraneous to the planning application,*
 - *The Natural Impact Statement (NIS) did not consider the effects of the development on special areas of conservation (SAC), and*
 - *The decision of the respondent was contrary to Article 6 of the Habitats Directive which requires that any appropriate assessment cannot have a lacuna.*
- 7.4. In his subsequent judgement, O'Regan J reached the following conclusions²:
- *He stated that whether or not planning permission would be required by individual landowners for the spread of slurry, that was not the application before the respondent.*
 - *He was satisfied that when making their decision to grant planning permission for the pig houses, the respondent, having relevant evidence available in the Environmental Impact Statement (EIS) and elsewhere, did consider and evaluate the impact of land spreading slurry, and gave consideration to the SACs in the immediate vicinity of the proposed development.*

¹ Summary of the case: [Hoey v an Bord Pleanála - Case Law - VLEX 792890929](#) accessed 14/12/23.

² Summary of the judgement: [Hoey v an Bord Pleanála - Case Law - VLEX 792890929](#) accessed 14/12/23.

- *He also noted that the difference between the respondent's assessment and the PA's assessment did not create a "lacuna" contrary to Article 6 of the Habitat's Directive.*

- 7.5. In the light of this judgement, I consider that it is in order for the Board to consider the proposal before it, which pertains to the construction of a slatted cattle shed with slurry holding tanks, and whether this proposal, as distinct from any land spreading that may ensue, would have a significant effect upon European sites in the surrounding area. In this respect, S.I. No. 113/2022 entitled "European Union (Good Practice for Protection of Waters) Regulations 2022" (as amended) is of relevance, as it provides a separate legal code to govern land spreading. Consequently, oversight from the planning system is not required.
- 7.6. I conclude that there are no legal impediments to the Board proceeding to assess/determine the application/appeal in the normal manner.

(ii) Visual and residential amenities

- 7.7. The proposed slatted cattle shed would be sited in the north-eastern portion of the site in a position that would be recessed from the L-5782-1 and at some remove from the applicants' existing farm yard. It would be of conventional form and modern design. Its, shorter, gabled southern elevation would correspond directly with the local road, and its longer western side elevation would also be visible from this road. The remaining elevations would be largely screened by adjacent hedgerows. Its overall visual impact would be capable of being lessened by the specification of a natural green finish to the proposed sheeting with which it would be clad.
- 7.8. Ordinarily the siting of a new agricultural building could be expected to be adjacent to any existing farm yard on the farm in question. In the present case, such a farm yard exists to the west of the site, and at some remove from where the proposed shed would be sited. However, in this case, the existing farm yard is accompanied to the north by a dwelling house that is not occupied in conjunction with the running of the farm. Thus, the amenities of this dwelling house would benefit from the selected siting at some remove from it. Other dwelling houses not occupied in conjunction with the running of the farm, lie further to the east. They would be sufficiently far away for their amenities not to be unduly affected by the selected siting.
- 7.9. I conclude that the proposal would be compatible with the visual and residential amenities of the area.

(iii) Access

- 7.10. The description of the proposed development used for public consultation stated the following: “New agricultural shed with underground slurry storage tanks and all associated site works.” This description includes the phrase “all associated site works”, which is normally understood to mean services, and could therefore extend to an access road. However, insofar as one of two proposed access roads is from a local road, the L-5782-1, as distinct from the existing farm laneway, I consider that it should have been explicitly stated in the description. I, therefore, consider that if the Board is minded to grant this access road, then a further public consultation exercise would be necessary, based on a description that explicitly refers to a new access point on the L-5782-1.
- 7.11. Notwithstanding the aforementioned paragraph, I will assess the two proposed means of access. The applicants’ preference is for a new access road between the proposed shed and the L-5782-1. Under further information, they submitted a traffic management assessment, which drew upon a traffic speed survey undertaken between 10.00 and 12.00 on Tuesday 2nd May 2023. This survey indicated that the 85th percentile speed of vehicles on the L-5782-1 in the vicinity of the site is 40 kmph. The requisite sightlines would thus be 3m x 50m, and they would accompany the proposed access point. These sightlines would be facilitated by the introduction of a 3.05m wide lay-by along the length of the site’s roadside frontage. Such a lay-by would also improve the sightline available to drivers exiting the existing laneway to the applicants’ farm yard. The “excessive” loss of roadside embankment/hedgerow could thereby be justified. The access road itself would have a width of 10m, which would be excessive and so should be halved.
- 7.12. While the proposed access point and, subject to a reduction in its width, the proposed access road would be of an acceptable specification, I am aware that, in principle, the addition of an access point off the local road is undesirable, unless it is deemed to be essential. The applicants have shown an alternative means of access to the proposed shed from the existing laneway to their farm yard via an existing field gate. The access road in question would be constructed through the northern portion of the site, and it would obviate the need for a new access point off the L-5782-1. It would thus be preferable to the applicants more favoured option. Its selection, to the

exclusion of the favoured option, would also obviate the need for any further public consultation exercise.

- 7.13. I conclude that the applicants' "alternative" means of access would be preferable and so should be selected to the exclusion of the one that would require a new access point on the L-5782-1.

(iv) Water

- 7.14. Under the proposal, the slatted cattle shed would be served by a new connection to the public water mains in the local road to the south of the site. Uisce Eireann was consulted on the application, but it did not respond. The planning report refers to the need for standard advisory notes on the provision of water.
- 7.15. Foul water generated by livestock housed in the proposed shed would be intercepted by the slurry tanks beneath the slatted pens. Subsequent, land spreading would be regulated by the provisions of S.I. No. 113/2022 entitled "European Union (Good Practice for Protection of Waters) Regulations 2022" (as amended).
- 7.16. Surface water run off from the roof of the proposed shed would be intercepted by rainwater goods and piped to the adjacent stream on the eastern boundary of the site. Surface water run-off from the apron of the proposed shed and the accompanying new access road is not the subject of any explicit drainage arrangements. A note on the site layout plan indicates that the access road, and presumably the apron, would be finished in grave/hardcore, and so permeability would be assured.
- 7.17. The site layout plan also indicates that the proposed shed would have a finished floor level of 100.25m, which would be c. 1m higher than existing ground levels in the north-eastern portion of the site. No explanation for the selection of this finished floor level is given. While the OPW's flood maps do not indicate that the site is the subject of any identified flood risk, the presence of the aforementioned adjacent stream may pose a highly localised flood risk and so *prima facie* the selected finished floor level may be prudent.
- 7.18. As part of the proposed shed, the eastern side passageway would share the same finished floor level, and the accompanying apron, which would afford tractor access, would presumably be a similar height, too. Both the passageway and the apron

would be close to the stream, and yet how the resulting interface would be handled has not been made explicit, e.g., any retaining measures beside the stream have not been shown. Consequently, risks to water quality would arise, e.g., from silt and concrete leaks or spillages during the construction phase, and from stray pieces of fodder and any mis-handling of slurry during the operational phase.

7.19. I conclude that the applicant has failed to demonstrate that the siting of the proposed slatted cattle shed and surrounding apron beside a stream would not pose an unacceptable risk to the quality of water in this stream during the construction and operational phases.

(v) Stage 1 screening for appropriate assessment

7.20. The requirements of Article 6(3) of the Habitats Directive as related to screening the need for appropriate assessment of a project under Part XAB, Section 177U of the Planning and Development Act, 2000 – 2023, are considered fully in this section.

7.21. A screening report for appropriate assessment was not submitted with this application/appeal case. Therefore, this screening exercise has been carried out *de novo*.

7.22. The project is not directly connected with or necessary to the management of a European site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

7.23. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European site.

7.24. The site coincides with a field in the applicants' farm at New Mills, Ramelton, Co. Donegal, and the description of the proposal is a new agricultural shed with underground slurry storage tanks and all associated site works.

7.25. The site is in agricultural use. It is down to grass, and accompanying vegetation suggests poor drainage, especially towards its lower end, which is bound by a stream flowing northwards. This stream flows into Lough Swilly at a point close to the mouth of the Leanne River. This point is c. 2.2km from the site. Lough Swilly is

designated a SAC (002287) and a SPA (004075) and the Leanne River is designated a SAC (0021716).

7.26. 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 European sites:

- Construction phase: uncontrolled surface water run-off bearing silt and concrete pollutants, and
- Operational phase: surface water run-off bearing stray fodder and spilt slurry.

7.27. The development site is not located in or immediately adjacent to a European site. The closest European sites, cited above, are c. 2.2km to the north. While the planner's report states that there is no hydrological link between the stream and these European sites, the Ordnance Survey Discovery Map No. 6 shows such a link and identifies the stream as the Ardree Burn.

Lough Swilly SAC (002287)

7.28. The qualifying interests and conservation objectives, i.e., M – maintain their favourable conservation condition, or R – restore their favourable conservation condition, are listed below.

- *Estuaries [1130] – M*
- *Coastal lagoons [1150] – R*
- *Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330] – R*
- *Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410] - ?*
- *Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0] – R*
- *Lutra lutra (Otter) [1355] – R*

Lough Swilly SPA (004075)

7.29. The qualifying interests and conservation objectives, i.e., M – maintain their favourable conservation condition, or R – restore their favourable conservation condition, are listed below.

- *Great Crested Grebe (*Podiceps cristatus*) [A005] – M*

- Grey Heron (*Ardea cinerea*) [A028] – M
- Whooper Swan (*Cygnus cygnus*) [A038] – M
- Greylag Goose (*Anser anser*) [A043] – M
- Shelduck (*Tadorna tadorna*) [A048] – M
- Wigeon (*Anas penelope*) [A050] – M
- Teal (*Anas crecca*) [A052] – M
- Mallard (*Anas platyrhynchos*) [A053] – M
- Shoveler (*Anas clypeata*) [A056] – M
- Scaup (*Aythya marila*) [A062] – M
- Goldeneye (*Bucephala clangula*) [A067] – M
- Red-breasted Merganser (*Mergus serrator*) [A069] – M
- Coot (*Fulica atra*) [A125] – M
- Oystercatcher (*Haematopus ostralegus*) [A130] – M
- Knot (*Calidris canutus*) [A143] – M
- Dunlin (*Calidris alpina*) [A149] – M
- Curlew (*Numenius arquata*) [A160] – M
- Redshank (*Tringa totanus*) [A162] – M
- Greenshank (*Tringa nebularia*) [A164] – M
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179] – M
- Common Gull (*Larus canus*) [A182] – M
- Sandwich Tern (*Sterna sandvicensis*) [A191] – M
- Common Tern (*Sterna hirundo*) [A193] – M
- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395] – M
- Wetland and Waterbirds [A999] – M

Leanne River SAC (002176)

7.30. The qualifying interests and conservation objectives, i.e., M – maintain their favourable conservation condition, or R – restore their favourable conservation condition, are listed below.

- *Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae)* [3110] – R
- *Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea* [3130] – R
- *Margaritifera margaritifera (Freshwater Pearl Mussel)* [1029] – R
- *Salmo salar (Salmon)* [1106] – R
- *Lutra lutra (Otter)* [1355] – M
- *Najas flexilis (Slender Naiad)* [1833] – R

7.31. During the construction and operational phases of the proposed development, the issues cited in Paragraph 7.26 could adversely affect the water quality in the Ardree Burn and, by extension, Lough Swilly and the Leanne River.

7.32. The qualifying interests that could be affected by a deterioration in water quality would be as follows:

- In the Lough Swilly SAC: Otter,
- In the Lough Swilly SPA: All the specified seabirds and wetland and waterbirds, and
- In the Leanne River SAC: FPM, Salmon, and Otter.

7.33. I am not aware of any other development sites, which could potentially give rise to in-combination effects.

7.34. No measures designed or intended to avoid or reduce any harmful effects of the project on a European site have been relied upon in this screening exercise.

7.35. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in-combination with other plans or projects would not be likely to have a significant effect on European Sites Nos. 002287, 004075 and 002176, or any other European site, in view of the Sites' Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

8.0 Recommendation

8.1. That permission be refused.

9.0 Reasons and Considerations

1. Having regard to WES-O-5 of the Donegal County Development Plan 2018 – 2024, it is considered that the applicant has failed to demonstrate that the proposed development, which would be sited immediately adjacent to the stream known as the Ardree Burn, would be capable of being constructed and operated without posing an unacceptable risk of water borne pollution to this stream and hence a reduction in its quality of water. Consequently, WES-O-5, which undertakes to “To maintain, protect, improve and enhance the quality of surface waters”, would be contravened, and so the proposal would be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in-combination with other plans or projects would not be likely to have a significant effect on European Sites Nos. 002287, 004075 and 002176, or any other European site, in view of the Sites’ Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

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.

Hugh D. Morrison
Planning Inspector

15th February 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-317425-23		
Proposed Development Summary	Erect new agricultural shed and underground slurry storage tanks.		
Development Address	New Mill, Ramelton, Co. Donegal		
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	X 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) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	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)
		N/A	Conclusion
No			No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: _____