



An
Bord
Pleanála

Inspector's Report ABP-317773-23

Development

(1) Demolish existing milking parlour and storage shed building; (2) construct agricultural shed to incorporate milking parlour area, dairy, plant room, ancillary storage, drafting/cow dispersal area and external underground slatted washings storage tank; (3) complete all ancillary site works and associated site structures.

Location

Cullentragh, Newtowncashel, County Longford

Planning Authority

Longford County Council

Planning Authority Reg. Ref.

2360012

Applicants

Patrick and Martin Connaughton.

Type of Application

Permission.

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellants

Wild Ireland Defence CLG.

Date of Site Inspection

16th February 2024

Inspector

Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located close to Lough Ree, at Cullentragh townland, north west of Newtowncashel, on a minor local road ,which ends at the lake. The site overlooks the lake. The proposed development is within an existing farmyard where the proposed development is sited among existing structures.
- 1.1.2. The site is given as 0.847 ha. Associated lands in the immediate vicinity in 3 parcels, on both sides of the road, comprises 45.25ha. Other associated lands are shown at Forthill and Cloontamore townlands.

2.0 Proposed Development

- 2.1.1. The proposed development is described as:
 - (1) demolish existing milking parlour and storage shed building;
 - (2) construct agricultural shed to incorporate milking parlour area, dairy, plant room, ancillary storage, drafting/cow dispersal area and external underground slatted washings storage tank; and
 - (3) complete all ancillary site works and associated site structures.
- 2.1.2. The application is accompanied by a Screening report for AA prepared by Whitehall Environmental.
- 2.1.3. A NIS was submitted in response to a further information request.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 11 conditions, including:
 - 2) All mitigation measures as outlined in the NIS submitted by way of further information on 10th July 2023, shall be implemented in full in the construction and operation of the proposed development.
 - 3) The landscape scheme to be implemented in full.

4) Surface water and effluent drainage facilities in accordance with the Department of Agriculture, Food and Marine Minimum specifications for Farmyard Drainage, Concrete Yards and Roads.

5) Compliance with the Department of Agriculture, Food & Forestry Farm Development services S123 specifications.

6) Re. external finishes.

7) Uncontaminated surface waters to discharged to soak pits or land drains.

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

All effluents including soiled yard water shall be directed to the proposed slatted tank

8) re. landspreading.

9) Slurry shall be spread only in accordance with the usage of lands and the capacity of the lands 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. It shall be carried out in accordance with the Code of Good Agricultural Practice for Protection of Waters - Regulations SI No. 378 of 2006.

10) Existing land and road drainage in the area shall not be adversely affected by the proposed development.

11) The adjacent public road shall be maintained in a clean manner with all effluent retained on site and where off-site spreading of slurry effluent is undertaken, any wheel borne mud/spillages etc. shall be cleaned by the applicant/operator through sweeping, before the end of the daylight period during which it has been deposited / occurred.

3.2. Planning Authority Reports

3.3. Planning Reports

3.3.1. First Planning Report recommending further information includes:

The applicant proposes to upgrade existing agricultural facilities on site, currently in use for agricultural purposes. The proposed development is located to the south of the existing agricultural buildings. The proposed development will not be visible from

the adjoining road. Taking account of the existing agricultural use on the site the principle of the proposed development is considered acceptable.

3.4. Further Information

3.4.1. A further information request, issued 26th June 2023, on two items:

1) In relation to the ecological sensitivity of the area, your proposed development will be located within 200 metres of Lough Ree, which is a Special Area of Conservation and Special Protection Area and therefore protected under the Habitats Directive.

Considering the nature of your proposal and having regard to the information submitted the Planning Authority (PA) is not satisfied that, given the proposed developments location in close proximity to the Lough Ree SAC & SPA, and the qualifying interests of same, that the proposed development would not have any effect on the protected habitats and can in fact be screened out, you are therefore requested to submit a Natura Impact Statement for the proposed development identifying mitigation measures to be implemented in order to protect the Natura 2000 Sites.

2) The siting of your proposed development in an area which is partially screened by existing structures is noted. However, the Planning Authority still have concerns regarding the visual sensitivity of this area, particularly considering the elevated nature of your site. You are now therefore requested to submit a full detailed landscaping plan, to provide screening from all viewpoints and in particular the south western boundary to ensure that adequate screening is provided year round.

3.4.2. Further information was submitted, 10th July 2023.

It included a NIS and landscaping proposals.

3.4.3. The second Planning Report recommending permission includes:

Satisfied with responses.

3.5. Prescribed Bodies

No submission.

3.6. Third Party Observations

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

4.0 Planning History

07-631 - Planning permission granted to retain existing silage base and effluent tank, construct slatted cubicle house, farmyard manure store, roof existing holding yard to incorporate calving pens, calf house and ancillary works.

01/109 - Planning permission granted for a slatted wintering accommodation for cows, silage base, extend collecting yard and provide effluent tank.

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 the rural setting, with a particular focus on encouraging less intensive farming practices and catering for localised food markets in a bid to reduce 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.

The site is located within the Broad Zone of Lough Ree. The Broad Zone is the designated areas of high amenity value and recreational potential associated with the major rivers and lakes in the county as well as the Royal Canal and areas of outstanding landscape quality in the northern fringes of the county.

5.2. Groundwater Protection Responses to the Landspreading of Organic Wastes

- 5.2.1. This document was produced by the DoELG/EPA/GSI and published by the Department of the Environment and Local Government, in 1999 to guide the use of organic wastes by landspreading. It includes a response matrix which is re-produced in the 2004 EPA document Landspreading of Organic Waste – Guidance on Groundwater Vulnerability Assessment.

5.3. Natural Heritage Designations

- 5.3.1. The Natura sites nearest the site are Lough Ree SAC (site code 000440) and Lough Ree SPA (site code 004064) located c160m and c230m straight line distance, at the closest point from the subject site, (to north, west and south); and Fortwilliam Turlough SAC (site code 000448) located c2.65km straight line distance from the subject site (to the north-east). Landspreading areas include lands which adjoin Lough Ree and are within the SAC/SPA.

5.4. EIA Screening

- 5.4.1. The proposed development is not of a class of development in Schedule 5, Parts 1 and 2. EIA screening is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal has been submitted, the grounds include:

The planning authority has failed to carry out an appropriate assessment as required by the Directive and the judgements of the CJEU and the High Court.

Referring to the NIS:

With reference to habitat at Carrowmurragh, the author has failed to consider the judgements C-293/17 and C-294/17.

The potential runoff of slurry spread close to the SAC may impact on otters.

The failure to identify the application of fertilisers on the surface of land in the vicinity of Natura sites as a potential risk.

Reference to GAP regulations, these regulations are implementing the Nitrates Directive. They have no place as a mitigating measure under the Habitats Directive.

Reference to a silt fence – this does not fulfil the requirements under Article 6(3), not to have lacunae.

Reference to best practice concrete/aggregate management measures. To what is this referring?

Manure to be spread in accordance with SI 113 of 2022. This plan has not been subjected to AA and therefore is not a mitigation measure for this site.

Board Pleanála's legal function under the Habitats Directive:

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

- To screen under Article 6.3
- To make a decision under Article 6.3

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;

Judgements C-293/17 and C-294/170 are referenced and the following is quoted.

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 (Habitats Directive) on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that the grazing of cattle and the application of fertilisers on the surface of land or below its surface in the vicinity of Natura 2000 sites may be classified as a 'project' within the meaning of that provision, even if those activities, in so far as they are not a physical intervention in the natural surroundings, do not constitute a 'project' within the meaning of Article 1(2)(a) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

On the basis of the total lack of certainty it is not possible for An Bord Pleanála to grant permission:

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.

As the PA has failed to assess this application according to its legal requirements they request the Board to award their costs against the PA.

6.2. Applicant Response

- 6.2.1. The response from the applicant is made by Ger Fahy, with a response regarding the NIS by Whitehall Environmental. The response includes:

Planning history is given.

The applicant and his son run the farm on which they have 125 cows and 17 cattle.

The proposed milking parlour is a more modern system which would cut the milking time in half. The existing milking parlour was built in the 1970s and requires upgrading. The proposed development will also provide for the upgrading of the animal manure handling system in line with the legislation.

The proposed development will provide for a modern mechanism for the collection and storage of dairy washings which will improve the environmental quality of the operation.

Milk producers are required to have a minimum of 31 days storage by 1st December 2025. The proposed development will comply and allow for more appropriate storage for washings.

The proposed upgrading will also provide for additional space for the animals which is important from a health and safety perspective. It is not for expansion or intensification of the farming activities.

The appeal is delaying the installation of necessary environmental improvements.

Reasons for appeal:

Animal manure / landspreading – which is not the subject of this application.

Best practice measures for run-off.

Historic court judgements (referencing out of date judgements).

Runoff from slurry spread.

Nitrogen deposition and the inclusion in the AA/NIS.

Lack of certainty in the proposal.

The response states that AA was carried out for the GAP Regs; implementing the 5th Nitrates Action Programme (NAP).

It quotes extensively from the Nitrates Explanatory Handbook.

The applicant has obtained a TAMS 2 grant – approved in March 2024, with until March 2024 to submit the claim for the investment. It can only be submitted after work is completed. This appeal would result in a loss of €80,000 grant funding.

The development complies with the climate mitigation provisions of the County Development Plan, table 3.1; also with Sec 4.3.4, sec 9.3, sec 9.3.1, sec 9.2, sec 9.3.2 & sec 16.4.15.

Responses to issues raised.

Issue 1 landspreading.

The application of organic fertiliser in the form of animal manure does not require planning permission. This is governed by GAP regs. This is an existing farm where animals manure has been handled and stored and applied on the farmland for generations and will continue to be applied irrespective of the outcome of this appeal.

The Regs are implementing the Habitats Directive.

The NIS for the application refers to a NIS for the NAP.

That NIS is quoted.

CJEU case 258/11 is quoted to the effect that for AA screening ‘it cannot have lacunae’.

Para 48 258/11 is quoted regarding significant effect

The requirement that the effect in question be ‘significant’ exists in order to lay down a *de minimis* threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having any effect whatsoever on the site were to be caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill.

This is the case.

Issue 2 best practice measures for run-off.

The appellant is cherry picking from a wide list of specific pollution controls which are set out in the NIS, some are quoted.

Issue 3 Historic court judgements (referencing out of date judgements)

CJEU cases 293/17 and 294/17

The statement, regarding the ecologists failure to consider the decisions of the ECJ or the High Court, is non-specific and inappropriate.

The appellant has not put forward their own ecology report to support their claims.

What is their ecology qualifications?

The vexatious tone should not be entertained by the planning system.

The appellant has failed to acknowledge that SI 113 of 2022, referenced in the AA Screening report, supercedes both ECJ cases referred to. It is therefore the most relevant and appropriate legislation.

CJEU cases 293/17 and 294/17 – neither case is relevant. Both relate to developments within designated Natura 2000 sites in the Netherlands. They related to excessive nitrogen deposition.

The appeal site is not within a Natura 2000 site and the spreadlands outside of the application site are also not within Natura 2000 sites. The proposed development will not involve an increase in animal manure as there is no increase proposed in stock.

Both SI No. 113 of 2022 and SI no 393 of 2022 supercede the ECJ cases and are ignored in the appeal.

Issue 4 Runoff from slurry spread.

The potential impact on otters has been carefully considered in the NIS.

The only change will be the provision of appropriate storage facilities for soiled water, now required under SI No. 113 of 2022.

The NIS is quoted.

Response from ecologist is quoted.

Issue 5 Nitrogen deposition and AA.

The relevance of the two cases referred to, to this appeal, must be questioned.

293/17:

Section 35 of the Considerations common to cases C-293/17 and C-29417 states:

In the latter instance, the assessing authority must examine whether the activity for which such a request has been made would cause an increase in nitrogen deposition. In that regard, the decisive factor is whether the situation created by the new project or new activity causes an increase in deposition compared with the situation prior to the issuing of a permit or compared with

the highest level of deposition actually caused in the period between 1 January 2012 and 31 December 2014. If the planned project or operation does not cause an increase in nitrogen deposition, the authority may issue authorisation under the Nbw 1998 by reference to the appropriate assessment upon which the PAS is based. In that case, the deposition caused by the planned project or operation forms part of the deposition analysed in that appropriate assessment. If that project or operation causes an increase in nitrogen deposition, the competent authority may issue authorisation if room for development is available for that purpose.

Issue 6 Lack of certainty in the proposal

There is no lack of certainty.

The unsubstantiated allegations and the non-specific approach to targeting random agricultural applications throughout the country by the appellant should not be entertained in the determination of this appeal.

6.2.2. Whitehall Environmental have responded regarding the NIS:

- That the NIS fails to identify the application of fertilisers on the surface of the land in the vicinity of Natura 2000 sites as a potential risk.

The NIS addresses this issue.

The measures provided in the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 have been provided as mitigation, for prevention of effects on Lough Ree SAC and SPA. Implementation of these measures will prevent significant effects on Lough Ree SAC/SPA.

The applicant is currently land-spreading in the areas identified. He will be permitted to continue to land spread in the areas while the appeal is being determined and regardless of the outcome of the appeal.

It has been demonstrated that should the application be granted permission, there will be no increase in stock numbers and no increase in the overall volume of manure being spread on the land.

In the current Water Framework Directive ecological status of Lough Ree is noted to be good, and the EPA does not consider this lake to be 'at risk'. Therefore, it can be concluded that the current use of manure on the lands by the applicant is not having a negative impact on water quality in Lough Ree at present.

- That the assessment cannot have lacunae.

The NIS is a comprehensive document that has considered all QIs of the Lough Ree SAC and SPA. The site specific conservation objectives of the site has been assessed in terms of the specific potential effects of the development on each QI. It is not considered that the NIS has lacunae.

- Re. mitigation for concrete, to what best practice is the author referring?

These points are clearly outlined in the mitigation section of the NIS.

- Re. SI 113 of 2022, that manure be spread in accordance with SI 113 of 2022, that this plan has not been subjected to AA and therefore is not a mitigation measure for this site.

This plan has been subjected to AA, and a link to the document is attached to the response.

- The potential that run-off of slurry spread close to the SAC may impact on otters.

The NIS addresses impact on otters and the mitigation measures proposed will ensure that significant effects on this species do not arise.

The proposed development will have no significant effects on Lough Ree SAC/SPA.

6.3. Planning Authority Response

No response.

6.4. Observations

No observations.

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, landspreading, and visual impact 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. A 'report of screening for AA' and a NIS were submitted.
- 7.2.3. 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 Natura sites nearest the site are Lough Ree SAC (site code 000440) and Lough Ree SPA (site code 004064) located c160m and c230m straight line distance at the closest point from the subject site, (to north, west and south); and Fortwilliam Turlough SAC (site code 000448) located c2.65km straight line distance from the subject site (to the north-east). Landspreading areas include lands which adjoin Lough Ree and are within the SAC/SPA.
- 7.3.2. 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.
- 7.3.3. 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.
- 7.3.4. 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.

- 7.3.5. A 'Statement of Screening for Appropriate Assessment' was submitted with the application and a Natura Impact Statement (NIS) was submitted in response to a request for further information. Notwithstanding the Screening conclusion of no significant effect, the NIS assesses potential impact and required mitigation.
- 7.3.6. Lough Ree SAC and SPA are screened in – 'having regards to the proximity of the application site and its spreadlands to this SAC, combined with the extreme groundwater rating of the application site and the spreadlands at Cullentragh, then significant effects upon this SAC and its QIs cannot be ruled out'.
- 7.3.7. Fortwilliam Turlough SAC, Corbo Bog SAC, Lough Funshinagh SAC and Ballinturly Turlough SAC are screened out due to lack of hydrological or ecological connectivity.
- 7.3.8. The development will not give rise to any increase in stock numbers or volumes of manure produced. This development pertains to the upgrading of the existing milking parlour only. There will be no overall intensification of farm activities.
- 7.3.9. Table 2 lists the Qualifying Interests of the Lough Ree SAC (Screened Out).
- 7.3.10. Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco Brometalia) Habitat – this habitat is most notable from two areas – on the southern shores of Coosan Lough and on the western shores of Lough Ree near Carrowmurragh.
- 7.3.11. Degraded raised bogs still capable of natural regeneration Habitat This habitat occurs within the bog complexes at Cloonlarge and Clooncraff Bogs, on the western shores of Lough Ree
- 7.3.12. Alkaline fens - main area of alkaline fen occurs around St John's Wood, on the western shores of Lough Ree, although it is likely to occur in additional pockets around the lake. This habitat is not present within or adjacent to the proposed application site and it does not occur within the Zone of Influence of this application site.

- 7.3.13. Limestone pavements - this habitat occurs along the mid-eastern shores of Lough Ree (Map 8 SSCO document), although it is likely to occur in other areas too. This habitat is not present within or adjacent to the proposed application site or the spreadlands. However, it occurs on lands to the north and south of the site. There will be no land-take or loss to any area of limestone pavement arising from the proposed development and there are no likely impacts on this habitat arising.
- 7.3.14. Bog woodland - not present within or adjacent to the proposed application site and it does not occur within the Zone of Influence of this application site.
- 7.3.15. The grounds of appeal disagrees with the 'screening out' of the habitat at Carrowmurragh, however this habitat occurs on the western shore of the lake, and is therefore unlikely to be affected by the proposed development.
- 7.3.16. The Qualifying Interests of the Lough Ree SAC (Screened In) are listed in Table 3. For the screened in QIs:
- Natural eutrophic lakes with Magnopotamion or Hydrocharition-type vegetation, Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnoin incanae, Salicion albae), and Otter (*Lutra lutra*),
- it lists the Potential Impacts / Effects
- 7.3.17. All species of the SPA are Screened In - the main impacts to these species would occur through any deterioration in water quality that could arise. This could affect the birds directly or it could lead to changes to the ecosystems and food webs that the birds depend on. It should be noted that there will be no direct impacts upon the birds through habitat loss, fragmentation, or visual or noise stimuli.
- 7.3.18. Screening summary

European Site	Site Code	Relevant QI & SCI	Potential for Impact
Lough Ree SPA	004064	Little Grebe Whooper Swan Wigeon	The SPA is c 230m, straight line distance to the north, west and south.

		Teal Mallard Shoveler Tufted Duck Common Scoter Goldeneye Coot Golden Plover Lapwing Common Tern Wetland and Waterbirds	Potential impacts may arise from construction, inappropriate surface water management at the site, during construction or operation. This could give rise to significant effects on the SCIs of this SPA.
Lough Ree SAC	000440	Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> * Otter. (*Denotes priority habitat)	The SAC is c 160m, straight line distance to the north, west and south. Potential impacts may arise from construction, inappropriate surface water management at the site, during construction or operation. This could give rise to significant effects on the SCIs of this SPA.

7.3.27. I am satisfied that no other Natura sites are likely to be affected by the proposed development. I am satisfied that the listed habitats and species are those likely to be affected by the proposed development.

7.3.28. The proposed development is the:

- (1) demolition of existing milking parlour and storage shed building;
- (2) construction of agricultural shed to incorporate milking parlour area, dairy, plant room, ancillary storage, drafting/cow dispersal area and external underground slatted washings storage tank; and

(3) completion of all ancillary site works and associated site structures.

7.3.29. The application details include the number of existing cattle. It is stated that there will be no increase in stocking, that the proposed development is intended to:

make the milking process easier and increase the space for cows for health and safety reasons,

provide for a modern mechanism for the collection and storage of dairy washings,

provide 31 days effluent storage, which is the minimum required for milk producers from 1st December 2025.

7.4. Potential Impacts

7.4.1. (Referred to in section 3.4 of the NIS)

Deterioration of water quality in designated areas arising from pollution to surface water or ground water during site preparation and construction.

Deterioration of water quality in designated areas arising from pollution to surface water or ground water during the operation of the site.

Disturbance to the QIs of Lough Ree SAC / SPA arising from noise and other anthropogenic effects.

Cumulative impacts with other proposed/existing developments.

7.4.2. Deterioration of water quality in designated areas arising from pollution to surface water or ground water during site preparation and construction:

Possible direct impacts include the pollution of the waters during construction with silt, oil, cement, hydraulic fluid etc. This would directly affect the habitat of protected species by reducing water quality. This pollution would have a significant negative effect upon the lake. Appropriate mitigation will be required to prevent these impacts from arising.

7.4.3. Deterioration of water quality in designated areas arising from pollution to surface water or ground water during the operation of the site (landspreading is referred to under a separate heading below):

The concern during the operation of the development is of oil or slurry contaminated surface water run-off from the farmyard. In addition, any structural weaknesses in the manure / silage storage areas could lead to impacts upon groundwater in the locality.

Groundwater quality can impact upon surface water quality as these two resources mix at the hyporheic zone, which is the region just under a river or stream bed where there is a mixing of shallow ground water and surface water.

7.4.4. Disturbance to the QIs of Lough Ree SAC / SPA arising from noise and other anthropogenic effects:

The otter and the Annex I bird species of Lough Ree are sensitive to deterioration in water quality.

Effects upon these species could also arise due to disturbance from an increase in noise on the site during construction, whilst increased human activity on the site could also lead to stress on these species.

7.4.5. Cumulative impacts with other proposed/existing developments:

7.4.6. No other planning applications were made in the townland of Cullentragh for the past five years.

7.4.7. It is stated that overall, following the implementation of the recommended mitigation measures, the current application will have no cumulative impacts upon any Natura 2000 when considered in combination with properly assessed developments. In the future, any proposed developments that have the potential to impact upon the Lough Ree SAC / SPA or any other European site will be subject to the Appropriate Assessment process in order to assess their potential impacts on Natura 2000 sites.

7.5. Mitigation Measures

Construction Phase:

7.5.1. The following mitigation measures are listed for the construction phase:

- Site preparation and construction must be confined to the development site only and it must adhere to all the mitigation measures outlined in this NIS. Work areas should be kept to the minimum area required to carry out the proposed works and the area should be clearly marked out in advance of the proposed works.
- Prior to the commencement of developments on site, the site engineer and the contractors must be made aware of the ecological sensitivity of the site and its connection to the Lough Ree SAC / SPA. They must be made familiar with the mitigation measures outlined in this NIS report and a signed statement saying that

they have read the mitigation measures and take them on board should be presented to the local authority along with the Notice of Commencement. The applicant will be responsible for alerting the engineers and contractors to the sensitivity of the habitats and water receptors surrounding the site. This will be done prior to the commencement of any site works.

- The construction and operation of the proposed development must comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022 (S.I. 113 of 2022).
- Guidelines within the Department of Agriculture's Explanatory Handbook for Good Agricultural Practice Regulations must also be followed.
- Manure, slurry and soiled water storage facilities should be constructed to Department of Agriculture, Food and The Marine specifications. They should be certified by an engineer before use and inspected regularly.
- To ensure that effects on the QI bird species do not arise from the noise generated on site, measures to control noise on site must be undertaken. The construction plant and tools used on-site must comply with the relevant Irish regulations in relation to noise and vibration requirements. In particular, it is recommended that all equipment used on site are newer models equipped with noise dampening systems and that the equipment is maintained in good condition and serviced regularly. Site management must also ensure that each item of plant and equipment complies with the noise limits quoted in the relevant European Commission Directive 2000/14/EC. All plant and equipment should be fitted with appropriate mufflers or silencers of the type recommended by the manufacturer. Only plant and equipment that has been designed for that task should be used and all equipment should be shut down or set to minimum when not being used.

Pollution Control

7.5.2. Under the heading 'Pollution Control' there are mitigation measures which apply to both the construction phase and the operational phase.

- Any constructional run-off from the site towards watercourses that surround the site should be intercepted as it is vital that there is no deterioration in water quality in any of the lake habitats surrounding the site, or in the drains that might lead to these

lakes. This will protect both habitats and species that are sensitive to pollution. Therefore, strict controls of erosion, sediment generation and other pollutants, associated with the construction process, should be implemented, including the provision of attenuation measures, silt traps or geotextile curtains to reduce and intercept sediment release where necessary.

In order to successfully achieve this, prior to the commencement of works, a silt fence should be installed to surround the entire construction works area. This silt fence should be sturdy and constructed of a suitable geotextile membrane to ensure that water can pass through, but that silt will be retained. An interceptor trench will be required in front of this interceptor fence.

The silt fence must be capable of preventing particles of 425 mm from passing through. The silt fence should be monitored daily to ensure that it remains functional throughout the construction of the proposed development. Maintenance of the fence should be carried out regularly. The fence should be inspected thoroughly after periods of heavy rainfall.

- There must be no discharges of contaminated waters to ground or surface waters from this development, either during the construction or operation of the development. The control and management of hydrocarbons on site will be vital to prevent deteriorations in surface and groundwater quality locally as the site has an extreme vulnerability rating. The following measures should be employed on site:

- Re-fuelling of equipment and machinery should be done off site. If this is not possible, then a dedicated re-fuelling location should be established on site, in the compound area, away from ground clearance or rock-breaking activities.
- Spill kits stations should be provided at the fuelling location for the duration of the works.
- Staff should be provided with training on spill control and the use of spill kits.
- All fuel storage containers should be appropriately bunded, roofed and protected from vehicle movements. These bunds will provide added protection in the event of a flood event on site.

- All chemicals must be stored as per manufacturer's instructions. A dedicated chemical bund should be provided on site, if chemicals are to be stored on site. Any chemicals used on site should be returned to the site compound and secured in a lockable and sealed container overnight, in proximity to the fuel storage area.
- Procedures and contingency plans should be established on site to address cleaning up small spillages as well as dealing with an emergency incident. A stock of absorbent materials such as sand, spill granules, absorbent pads and booms should be kept on site, on plant working near the water, and at the refuelling area.
- Daily plant inspections will be completed by all plant operators on site to ensure that all plant is maintained in good working order. Where leaks are noted on these inspection sheets, the applicant should remove the plant from operations for repairs.
- All personnel shall observe standard precautions for handling of materials as outlined in the Safety Data Sheets (SDS) for each material, including the use of PPE. Where conditions warrant, emergency spill containment supplies should be available for immediate use.
- Best practice concrete / aggregate management measures must also be employed on site.
 - The washing out of concrete trucks or chutes on site should be avoided. If this cannot be avoided, then a designated concrete wash out area should be set up on site; typically, this will involve washing the chutes, pumps into a designated IBC (intermediate bulk container tank) before removing the waste water off site for disposal.
 - Best practice in bulk-liquid concrete management should be employed on site addressing pouring and handling, secure shuttering, adequate curing times etc.
 - Stockpile areas for sands and gravel must be kept to a minimum size, well away from the drain on site.

- Where concrete shuttering is used, measures should be put in place to prevent against shutter failure, and control storage, handling and disposal of shutter oils.
- Activities which result in the creation of cement dust should be controlled by dampening down the areas.
- Raw and uncured waste concrete should be disposed of by removal from the site.
- Stockpile areas for sands and gravel must be kept to a minimum size.
- All construction waste must be removed from site by a registered contractor to a registered site. Evidence of the movement and safe disposal of the construction waste will be retained and presented to Local Authority upon request. The applicants and construction contractors will be responsible for the safe removal of any construction waste generated on site. There must be no disposal of construction waste or spoil in areas outside of the application site.

7.5.3. I am satisfied that the implementation of the mitigation measures proposed for the construction phase of the proposed development will ensure that the proposed development will not adversely affect the European sites in view of the sites' Conservation Objectives.

Operational Phase

- 7.5.4. It is worth noting that for the operational phase, the proposed development will improve the management of surface water, both clean and contaminated water, which will reduce the likelihood of impact on the protected sites.
- 7.5.5. Of the mitigation set out under the heading 'pollution control' except for the best practice concrete/aggregate management, which refers only to the construction phase, all other mitigation measures apply also to the operational phase.
- 7.5.6. I am satisfied that the implementation of the mitigation measures proposed for the operational phase of the proposed development will ensure that the proposed development will not adversely affect the European sites in view of the sites' Conservation Objectives.

7.6. Cumulative Impacts

- 7.6.1. I am satisfied that that the subject application will have no cumulative impacts on the protected sites Lough Ree SAC (site code 000440) or Lough Ree SPA (site code 004064) or any Natura 2000 when considered in combination with properly assessed developments.

7.7. Conclusion

The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V [of the Planning and Development Act 2000 as amended.

Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that it would be likely to have a significant effect on Lough Ree SAC and Lough Ree SPA. Consequently an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.

Following an Appropriate Assessment, it has been determined that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site No 000440, or 004064, or any other European site, in view of the sites' Conservation Objectives.

This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

Regard has been had in particular to the detailed mitigation proposed for the construction and operation of the proposed farm buildings and structures.

7.8. Principle of Development

- 7.8.1. 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.

7.9. Landspreading

- 7.9.1. Landspreading areas are identified on aerial survey mapping submitted with the application, and include lands within the SAC (000440) at Cullentragh near the shore of Lough Ree, and lands at Forthill and Cloontamore.
- 7.9.2. In PIP mapping, most of the lands are not indicated as of particular concern for either phosphorus or nitrogen.
- 7.9.3. The Geological Survey of Ireland (GSI) map data indicate that most of the land overlies a regionally important karsified conduit aquifer. The Groundwater Protection Response to landspreading in such areas is based on the vulnerability of the aquifer. Where there is a 'low', 'moderate' or 'high' vulnerability rating the response 'R1', is that landspreading is acceptable subject to normal good practice. Land with an 'extreme' vulnerability rating has an R3² response, which means that landspreading is not generally acceptable, unless a consistent minimum thickness of 2m of soil and subsoil can be demonstrated.
- 7.9.4. The NIS states that some of the land on which landspreading will be carried out has a Groundwater Protection Response of R3¹, this would imply that it overlies either a locally important aquifer of extreme vulnerability or a poor aquifer of extreme vulnerability. The Groundwater Protection Response noted in the NIS, that land-spreading can be carried out, provided that a consistent minimum thickness of 1m of soil and subsoil can be demonstrated, would be correct for a poor or locally important aquifer, but is not correct for a regionally important aquifer. As previously stated, the requirement for an regionally important aquifer of extreme vulnerability is for a consistent minimum thickness of 2m of soil and subsoil.
- 7.9.5. The issue of landspreading is referred to in the grounds of appeal. It states that the NIS has failed to identify the application of fertilisers on the surface of land in the vicinity of Natura sites as a potential risk. It states that the GAP regulations implement the Nitrates Directive and they have no place as a mitigating measure under the Habitats Directive. In relation to the reference to manure to be spread in accordance with SI 113 of 2022 the grounds states that this plan has not been subjected to AA and therefore is not a mitigation measure for this site.

- 7.9.6. In the response to the grounds of appeal the applicant reiterates that the measures provided in the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 have been provided as mitigation, for prevention of effects on Lough Ree SAC and SPA. Implementation of these measures will prevent significant effects on Lough Ree SAC/SPA.
- 7.9.7. Both the grounds of appeal and the applicant's response refer to the Courts of Justice of the European Union (CJEU) Joined cases C-293/17 and C-294/17, in relation to landspreading; the former quoting from it the statement that the grazing of cattle and the application of fertilisers is included as part of a project; the latter quoting from it the statement that the decisive factor is whether the situation created by the new project or new activity causes an increase in deposition (of nitrogen) compared with the situation prior to the issuing of a permit.
- 7.9.8. A Natura Impact Statement, of Ireland's Fifth Nitrates Action Programme (NAP), was published 25th February 2022.

It includes:

6.3.3 Impact Prediction - It is acknowledged that the NAP is a high-level document and as such prediction of effects at individual European sites is not practical as the NAP lacks the necessary spatial detail to give context to the extent or significance of any potential effects. As such, the potential for effects is raised within the confines of the NAP with a view to appropriately informing lower levels of planning where the necessary spatial detail is available and identifying the mitigation measures that must be in place for lower tier plans and projects to ensure the protection of the European sites.

- 7.9.9. Although it is part of the description of the development that the proposed development is intended only to update the milking parlour to improve the milking process, increase the space for individual cows, and provide increased effluent storage including for dairy washings, the development could potentially increase the number of cows / livestock kept on the farm, in which case the landspreading of the organic waste would have to be considered as part the assessment of the proposed development.
- 7.9.10. From the documentation on the file I am satisfied that the proposed development is intended for improvement and will not involve expansion of the existing farming

enterprise. It is not necessary therefore to assess landspreading as part of the assessment of this development.

7.10. Visual Impact

- 7.10.1. Although the site is close to Lough Ree, in a location where it is elevated with reference to the lake, and where there is little screening from vegetation, the proposed development is located within an existing farmyard complex where there are other buildings between the proposed building and the lake, and the proposed building will replace existing buildings, therefore it is considered that the proposed development will not impact unduly on the visual amenities of the area.

8.0 Recommendation

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

9.0 Reasons and Considerations

- 9.1.1. The proposed development is located in a rural area where agriculture is the predominant land use. The proposed development would improve the existing farmyard facilities, would not impact on the amenities of the area, would not affect a Natura site or otherwise impact on the natural heritage of the area and the proposed development would accordingly be in accordance with the proper planning and development of the area.

10.0 Conditions

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of

development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2 The mitigation proposed in the NIS in relation to the construction and operation of the proposed buildings and structures shall be implemented in full.

Reason: In the interest of clarity.

3 All uncontaminated surface water run-off from the proposed development shall be collected separately from soiled water and shall be disposed of to the satisfaction of the planning authority.

Reason: To minimise soiled water in the interest of environmental protection and pollution control.

4 All storage facilities for farmyard effluent including dairy washings shall:
a) be so constructed, maintained and managed as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water of any effluent produced, and
b) comply with such construction specifications for those facilities as may be approved by the Minister for Agriculture, Food and the Marine.

Reason: In the interest of environmental protection and pollution control.

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

21 March 2024

Appendix 1 Photographs

Appendix 2 Longford County Development Plan 2021-2027 extracts

Appendix 3 Site Synopsis, Lough Ree SAC (site code 000440) and Lough Ree SPA (site code 004064)

Appendix 4 Groundwater Protection Responses to the Landspreading of Organic Wastes, EPA.

Appendix 5 Natura Impact Statement, Ireland's Fifth Nitrates Action Programme, Department of Housing, Local Government and Heritage, 2021, extract.

Appendix 6 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317773			
Proposed Development Summary	(1) demolish existing milking parlour and storage shed building; (2) construct agricultural shed to incorporate milking parlour area, dairy, plant room, ancillary storage, drafting/cow dispersal area and external underground slatted washings storage tank; and (3) complete all ancillary site works and associated site structures.			
Development Address	Cullentragh, 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		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)	Conclusion
No	/	N/A		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:** _____