



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317914-23

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<b>Development</b>	Cattle house with slurry tank and ancillary site works
<b>Location</b>	Knockenagh South, Coolard, Lisselton, Listowel, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	23/692
<b>Applicant(s)</b>	Pat O'Donnell
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	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 0.18 hectares and is located within the townland of Knockenagh South, County Kerry, which is located approximately 6km northwest of the town of Listowel. The site comprises of an existing agricultural farmyard which consists of a hay/straw shed and straw bedding shed.
- 1.2. Access to the site is via a single carriageway local road. The site is bounded by agricultural lands to the north, east and south and by the public road to the west. The Galey River, which is part of the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165), is located approximately 1.4km south of the subject site.

## **2.0 Proposed Development**

- 2.1. Permission is sought for the construction of an easy feed slatted house. The structure will measure 149sqm, will have a ridge height of 6.9 metres and will consist of an underground slurry tank, lie back area, cattle crush, feed barriers, canopy and all ancillary site works. It is proposed to plant a number of native trees along the boundaries of the proposed development.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Kerry County Council (The Planning Authority) decided to grant permission by Order dated 10<sup>th</sup> August 2023, subject to 5 no. mainly standard conditions including for external finishes to be dark grey and landscape screening to the site boundaries. No financial contribution attached.

### **3.2. Planning Authority Reports**

#### Planning Reports

- Area Planner's report assessed the development in terms of surface water disposal, EIA preliminary examination and visual impact. AA Screening undertaken by the Planning Authority's Ecologist. Report recommended a grant of permission.

## Other Technical Reports

- Environmental Assessment Unit (EAU) (report dated 31<sup>st</sup> July 2023) – Appropriate Assessment screening undertaken. Concluded that the development is not likely to have a significant effect on any European Site.

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

A third party submission was received from Mr. Peter Sweetman who raised issues with regards to the assessment of the planning merits of the application, EIA Screening responsibilities, Habitats Directive responsibilities with reference to CJEU Case 258/11 and compliance with the Water Framework Directive with reference to CJEU C-293/17 and C-294/17. It was stated that the application was located within 100 metres of the Lower River Shannon SAC and therefore appropriate assessment was required.

## 4.0 Planning History

None

## 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.

### 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 site is the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165), which is located approximately 1.4km directly south of the subject site (i.e. Galey River) and approximately 3km downstream via a drain and stream.

### 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 30<sup>th</sup> August 2023 opposing the Planning Authority's (PA) decision. The grounds of appeal can be summarised as follows:

- The PA does not claim that the AA is as per the CJEU clarification of the law (C-293/17, C294/17).
- It is stated that the PA has not read CJEU Cases 293/17 and 294/17 in response to the issue of landspreading.
- It is stated that the Department of Agriculture is not the body which performs appropriate assessment in response to the PA's statement that slurry storage capacity and application is regulated under the European Union (Good Agricultural Practice for Protection of Waters (Amendment) Regulations 2022, as amended).
- The conclusion of the PA is questioned, stating that there is no need to establish a significant effect but only to determine that there may be such an effect.

## 6.2. Applicant Response

No response

## 6.3. Observations

None

## 7.0 Assessment

- 7.1. The proposed development is within an existing established agricultural farmyard. I note that the siting of the development will result in hedgerow removal, however, I consider the proposed replacement landscaping to be adequate. Having regard to objectives KCDP 9-39, KCDP 9-52, KCDP 9-53 and KCDP 9-55, I consider the proposed development to be in accordance with the provisions of the Kerry County Development Plan 2022-2028 and, therefore, is acceptable in principle. If the Board are minded to grant permission I recommend that the external finishes of the building should be green / dark green in colour and not dark grey as per the PA's condition, in the interest of visual amenity.
- 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 the grounds of appeal of the Appellant in relation to concerns regarding the AA Screening undertaken by the PA. I note the AA Screening undertaken by the PA's ecologist who concluded that the proposed works, individually or in combination with other plans and projects, were not likely to have a significant effect on a European Site and therefore a stage 2 appropriate assessment was not required.
- 7.5. The subject site is not located within any European Site. The subject site is located approximately 1.4km directly north of the Galey River which forms part of the Lower River Shannon SAC (Site Code 002165) and approximately 3km via a hydrological connection.
- 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 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_objectives/CO000101.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000101.pdf</a>	Approximately 1.4 metres south of the subject site.	Yes, potential indirect hydrological pathway	Yes
River Shannon and River Fergus Estuaries SPA (004077)	22 QIs <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004077.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004077.pdf</a>	Approximately 6.5km north of the subject site.	No, due to distance pathway is significantly remote. No ex-situ effects likely.	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. Having viewed the Environmental Protection Agency's AA Mapping Tool, I note that a watercourse is located approximately 220 metres southeast of the subject site, i.e. on the southern side of the public road. This watercourse is hydrologically connected to the Galey River approximately 2.5km downstream. I note that clean surface water is proposed to be disposed of via an onsite drain. All effluent from the slatted house will discharge into the underground slurry tank. The construction phase will result in short term construction related emissions typical of a minor agricultural development. Having regard to the above and distance to the European Site, I am satisfied that the development would not likely result in a direct or indirect effect on the conservation objectives of the European Site in terms of species or habitat fragmentation or

disturbance. Furthermore, I am satisfied that the development would not likely result in any significant ex-situ effects on any species.

- 7.11. I note the Appellant raises the issue of landspreading and outlines CJEU Cases 293/17 and 294/17 and states that the Department of Agriculture are not the authority for AA.
- 7.12. 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 the above, 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 Lower River Shannon SAC, or any other European Site.

#### Screening Determination

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

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

## 10.0 Conditions

1.	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The use of the proposed building shall be for agricultural purposes only.</p> <p><b>Reason:</b> In the interest of clarity.</p>
3.	<p>The cladding to the roof and walls of the proposed building shall be green/dark green in colour.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
4.	<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>

	<b>Reason:</b> In the interest of public health and residential amenity.
5.	<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>
6.	<p>The existing roadside boundary shall be retained in full and shall be suitably strengthened with native hedge species, which shall be agreed in writing with the planning authority prior to commencement of the development. The landscaping on site shall be carried out in accordance with the said details and in accordance with the landscaping proposed on the site plan submitted with the application.</p> <p><b>Reason:</b> In the interest of visual amenity and to compensate for the loss of biodiversity.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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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>	317914-23		
<b>Proposed Development Summary</b>	Construction of a roofed easy feed slatted house with underground slurry tank, lie back area, cattle crush, feed barriers, canopy and all ancillary site works.		
<b>Development Address</b>	Knockenagh South, Coolard, Lisselton, Listowel, 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>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	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>
<b>No</b>	X		No EIAR or Preliminary Examination required
<b>Yes</b>			Proceed to Q.4
<b>4. Has Schedule 7A information been submitted?</b>			
<b>No</b>			Preliminary Examination required
<b>Yes</b>			Screening Determination required

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

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