



An
Bord
Pleanála

Inspector's Report

ABP-319326-24

Development

Permission to erect cattle shed with two underground slatted effluent storage tanks, dungstead and all associated site works.

Location

Newtown, Castledermot, Co. Kildare

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

24/8

Applicant(s)

Peter & Aine Byrne

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

Peter Sweetman, Wild Ireland Defense CLG.

Observer(s)

None

Date of Site Inspection

12/06/2024

Inspector

Paula Hanlon

1.0 Site Location and Description

- 1.1. The subject site (approximately 0.89ha) forms part of an established farmstead located off a narrow private access road in the townland of Newtown, c.3.7km SE of Castledermot in a rural area in Co. Kildare. This access road serves an established cluster of agricultural buildings setback approximately 600m from the adjoining R418 (Castledermot - Tullow) regional road, a single dwelling (applicants' home) sited c.400m SW of these agricultural buildings and adjoining lowlying agricultural grasslands.
- 1.2. The farmyard contains a large cattle shed, agricultural storage shed and yard area, with the proposed cattle shed and dungstead (the subject of this application) to be sited immediately south of these structures and within the established farm complex. The existing circulation area between sheds comprises a mix of concreted and hard surfaced areas. There are also some features which appear to be associated with former structures and stone walls that were sited within this farmstead. The farmyard is contained on predominantly level ground and the topography in the surrounding area slopes gently downwards in an easterly direction. Access is by means of an agricultural gated entrance off the private cul-de-sac access road.
- 1.3. There is scattered rural housing and an industry (civil engineering ltd.) in the surrounding area, however this complex is significantly setback from the adjoining road network and adjoining housing and is predominantly surrounded by agricultural lands.
- 1.4. Groundwater quality is classed as 'good' in this region (WFD) and groundwater vulnerability is classified as 'high' with Siluro-Devonian granitic rock and appinite bedrock from the Caledonian (Silurian - Devonian) period (GSI) in this region.

2.0 Proposed Development

- 2.1. The proposed development as outlined within the public notices comprises permission to construct cattle shed (275m²) with overall height 7.4m with 2 underground slatted effluent storage tanks, dungstead with 1.8m high wall and all associated site works.

2.2. The application was accompanied by the following documentation of note –

- Site Location Map, Site Layout Map and plans & particulars of cattle shed
- Teagasc Advisor Statement & Accompanying Fertiliser Plan.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 28 February 2024, Kildare County Council issued a Notification of decision to grant planning permission subject to 12(no) conditions. The conditions were mainly standard, and are summarised below:

- Development to be carried out in accordance with documents (Condition 1)
- Confirms use of development for agricultural purposes only (Condition 2)
- Hours of Operation (Condition 3).
- Drainage Requirements (Conditions 4,5,10)
- Protection of public road at construction stage (Condition 6)
- Oil & chemical storage tanks requirement (Condition 7)
- Effluent seepage/soiled water requirements (Good Agricultural Practice for Protection of Waters Regs 2022 (Condition 8)
- Fertiliser of land requirements Good Agricultural Practice for Protection of Waters Regs 2022 (Condition 9).
- C&D Resource Waste Management Plan (Condition 11)
- Financial Contribution (Condition 12).

3.2. Planning Authority Reports

3.2.1. Planning Reports

A planning report completed 28/02/2024 forms the basis for the decision by Kildare County Council to grant permission. The content of this report outlines that the principle of the development adjacent to existing agricultural sheds in a rural location is considered to be acceptable and recommends a grant of permission subject to

conditions. An Appropriate Assessment Screening Report with Conclusion Statement and an EIAR Screening are attached to the Planner's Report.

3.2.2. Other Technical Reports

Municipal District Engineer (Athy): No objection subject to conditions.

Water Services: Conditions recommended.

Environment Section: No objection, conditions recommended.

3.2.3. Conditions

I consider that all conditions attached by the Planning Authority in its decision to grant permission in this case are generally standard conditions insofar as they relate to cattle shed, dungstead and associated works. However, condition 7 attached by the PA relates to requirements in terms of overground oil & chemical storage tanks, which in my view is not specifically relevant in this case and therefore is not required to be attached to any grant of permission should the Board be minded to grant permission. Furthermore, given that there are no dwellings along the serving private road or in the immediate surroundings of this site (with the exception of the applicant's dwelling), I do not consider it necessary to attach a condition regarding hours of operation at construction stage (condition 3).

3.3. **Prescribed Bodies**

EHO: Proposal is considered acceptable, subject to the construction of all buildings in compliance with specifications of the Department of Agriculture, Food and The Marine.

3.4. **Third Party Observations**

The PA received one third-party submission during the course of their determination from Mr. Peter Sweetman (and on behalf of Wild Ireland Defence). The submitter outlines the legal tasks of a PA when dealing with an application of this type and states

that Appropriate Assessment is required as the development proposed is within 1 kilometre of the River Barrow and River Nore SAC (002162).

4.0 Planning History

Subject Site:

06/1016: Permission granted for the construction of agricultural building for storage of livestock (466m²) and all other ancillary works.

Adjacent Lands:

06/560: Permission granted for double garage.

04/2761: Permission granted for single storey extension (38.2m²) to dwelling.

5.0 Policy Context

5.1. Kildare County Development Plan 2023-2029

5.1.1. The Kildare County Development Plan 2023-2029 (CDP) which came into effect 28 January 2023 is the operative Development Plan for the county.

5.1.2. The site is located within a rural area of Co. Kildare. Relevant policies, objectives and standards within the CDP are set out under Chapter 9 – Our Rural Economy and Chapter 15 - Development Management Standards.

5.1.3. Objectives and Development Management Standards of particular relevance include:

- Facilitate agriculture, horticulture, forestry, tourism, energy production and rural resource-based enterprise within the rural settlements and in appropriate rural locations subject to relevant development management standards (Objective RD O2).
- Require new buildings and structures:
 - To be sited as unobtrusively as possible.
 - To be clustered to form a distinct and unified feature in the landscape.

- To utilise suitable materials and colours.
- To utilise native species in screen planting to integrate development into the landscape (Objective RD O5).

Agricultural Development Standard [In terms of siting, scale, materials & finishes and planning considerations (including ecology)] (DM Standard 15.9.8).

5.2. **Regional Policy**

Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy 2019-2031

5.3. **National Policy**

- Climate Action Plan 2024
- 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.

5.4. **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 appeal site is not located on or within proximity to any designated Natura 2000 site(s) or Natural Heritage Area(s). The River Barrow and River Nore SAC (002162) being the nearest European site is approximately 4.5 kilometres north (at its nearest point) and west of the subject site and the Slaney River Valley SAC (000781) is a distance of approximately 4.3km south of the subject site. Corballis Hill pNHA is the nearest pNHA located approximately 5.9km north of this site.

5.6. EIA Screening

See completed Appendix 1 - Form 1 on file. Having regard to the nature and type of development proposed, it is not considered that it falls within the classes listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (As amended), and as such preliminary examination or an environmental impact assessment is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The Planning Authority failed to carry out an Appropriate Assessment screening as required and failed to address the Water Framework Directive.
- Reference is made to case law 258/11 and IEHC 400 (2014).
- A decision to grant permission is not possible given the lack of certainty in the information submitted.
- The test for 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.

6.2. Applicant Response

- The applicant in responding to the appeal on the 16 April 2024, submitted a copy of correspondence from his Teagasc Advisor, which details that the proposed development is sought for the ease of management of livestock and better Health and Safety while handling livestock. It also references that the proposed development will allow for an extended storage period and to the associated benefits of same in regard to spread of slurry and FYM, leading to improved uptake of nutrients, which will have a positive effect on water quality.

6.3. Planning Authority Response

None.

6.4. Observations

None.

7.0 Assessment

Having examined the application details and all other documentation on file, including the appeal submission received in relation to the appeal, the reports of the planning authority, having inspected the site and having regard to relevant local, regional and national policies and guidance, I consider that the main issues in this appeal to be considered are as follows:

- Water Framework Directive
- Screening for Appropriate Assessment

7.1 Water Framework Directive

The appellant in their appeal submission contends that the PA failed to address the Water Framework Directive. The WFD is implemented through River Basin Management Plans (RBMPs) and the subject lands are located within the Barrow Catchment. I note that groundwater quality is classed as 'good' in the most recent

WFD Status and groundwater vulnerability is classified as 'high' with bedrock of Siluro-Devonian granitic rock and appinite in this region. In examining the EPA's Barrow Catchment Report, (May 2024), I note that agriculture is listed as a 'significant pressure' type category for at risk waterbodies only. Given the nature and extent of works proposed and in noting to the Board that landspreading does not form part of this application and given that there are no waterbodies/hydrological connections to this site and that all soiled waters are directed to a storage tank, I am satisfied that the proposal will not pose a risk to ground or surface waters. I suggest that standard conditions in regard to the treatment of surface water be attached, in the event that the Board is minded to grant permission.

7.2 Appropriate Assessment (AA) Screening

- 7.1.1 I note the concerns of the Appellant regarding the issue of Appropriate Assessment. In the outset, for the purposes of clarity, the Board should note that landspreading does not form part of this application and such process is 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 (13th January for County Kildare). 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.
- 7.1.2 I have considered the proposed project in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. The subject site is located approximately 4.5km (at its nearest point) SE of the River Barrow and River Nore SAC (002162) and approximately 4.3km north of the Slaney River Valley SAC (000781). [I note to the Board that the appellant incorrectly references that the proposed development is within 1 kilometre of the River Barrow and River Nore SAC (002162)].
- 7.1.3 The development comprises the construction of a cattle shed, 2 underground slatted effluent storage tanks, dungstead and all associated site works. The site is level and

slopes downwards in an easterly direction. I noted on site inspection that there were no land drains within the immediate vicinity of this site. Having viewed the Environmental Protection Agency's AA Mapping Tool and having visited the site, I note that there are no direct hydrological connections between the development proposed or the subject site and the European Sites. In applying Fossitt's classification on habitats, I also noted that the site is predominantly comprised of buildings and artificial surfaces (BL3) in the form of agricultural structures and farmyard and improved grasslands (GA1).

7.1.4 Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- Having regard to the absence of any direct hydrological connection from the subject site to any European Site. The nearest watercourse is located approximately 600 metres east of the site.
- Given the topography of the site which is flat and surrounding agricultural lands which slope gently downwards in an easterly direction, coupled with the location and separation distance from the European Sites and the intervening vegetated buffers.
- Having regard to the distance of the site from the European Sites regarding any other potential ecological pathways.
- No ex-situ effects are likely having regard to the characteristics of the site which comprises of a yard area of hard surfacing surrounded by agricultural fields laid in grass between the site and the River Barrow and River Nore SAC and Slaney River Valley SAC.
- Having regard to the screening report and determination of the PA.

7.1.5 I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site, either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required. The Board should note that I have not taken into account any measures intended to reduce or avoid any harmful effect on the European Sites.

8.0 Recommendation

Having regard to the foregoing it is recommended that permission be granted for the proposed development, subject to conditions.

9.0 Reasons and Considerations

Having regard to the nature, scale and extent of the proposed development and to its location and distance to any European Site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not have a likely significant effect on any European Site and is in accordance with adopted local policy and objectives most notably Objective RD O2 of the Kildare County Development Plan 2023-2029.

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 slatted shed shall be used only in strict accordance with a management schedule which shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The management schedule shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2022, as amended, and shall provide at least for the following:

- (1) Details of the number and types of animals to be housed.
- (2) The arrangements for the collection and storage of slurry.
- (3) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

Reason: In order to avoid pollution.

3. 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-

(a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and

(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.

Reason: In the interest of environmental protection and public health.

4. All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the proposed and existing storage facilities and no effluent or slurry shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

Reason: In the interest of public health.

5. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.

Reason: In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

6. A minimum of 16 weeks storage shall be provided in the underground storage tank. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of environmental protection and public health.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Wicklow County Council Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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.

Paula Hanlon
Planning Inspector

26 July 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-319326-24		
Proposed Development Summary	To construct cattle shed (275m ²) with 2 underground slatted effluent storage tanks, dungstead and all associated site works.		
Development Address	Newtown, Castledermot, Co. Kildare		
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	X
		No	
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			
No		X	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No		X	No EIAR or Preliminary Examination required
Yes			

4. Has Schedule 7A information been submitted?

No	X	
Yes		

Inspector: _____

Date: _____