



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319349-24

<b>Development</b>	Construction of a new agricultural slatted shed, associated effluent tank and all associated site works.
<b>Location</b>	The Bower, Killygordan, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2460006
<b>Applicant(s)</b>	Aidan Murray.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission with conditions
<b>Type of Appeal</b>	Third Party V Grant
<b>Appellant(s)</b>	Wild Ireland Defence CLG
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	9 <sup>th</sup> July 2024
<b>Inspector</b>	Ronan O'Connor

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## **1.0 Site Location and Description**

- 1.1.1. The application site comprises a 0.190 ha plot of land in the rural area of the Bower, Killygordon, located east of the L-2284-1 local road within an existing farmyard complex. To the south of the site is a concrete works. The site is bounded otherwise by agricultural lands.

## **2.0 Proposed Development**

- 2.1. Construction of a new agricultural slatted shed, associated effluent tank and all associated site works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Grant Permission with Conditions.

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

#### **3.2.1. Planning Reports**

- Principle of development acceptable in the context of an established farming complex.
- Not considered that there will be any visual issues/no visual or amenity concerns for the MSA landscape.
- No significant impacts on residential amenity anticipated.
- No concerns in relation to access.
- Not considered an Appropriate Assessment is required/Screening Report is attached.
- Site within an area of archaeological potential around 3 no. recorded monuments.

- Recommendation was to grant permission.

#### 3.2.2. Other Technical Reports

Roads [dated 18/01/24] – Standard conditions apply.

#### 3.2.3. Conditions

Conditions of note include:

Condition 2 – Archaeological Monitoring

### 3.3. Prescribed Bodies

Loughs Agency – No objections subject to conditions relating to the protection of water quality/fish populations.

### 3.4. Third Party Observations

- 3.4.1. One no. third party observation was received at application stage. This raises similar issues to those raised at appeal stage and these are summarised in Section 6 below.

## 4.0 Planning History

PA Ref 2051288 – Grant permission for Construction of an extension to existing agricultural shed to include additional slatted bays, a milking parlour, roofed calving and cattle handling areas and associated site development works [decision date 05<sup>th</sup> November 2020]

PA Ref 0660282 – Grant permission for construction of a cattle shed with integral slurry tank [decision date 07<sup>th</sup> July 2006]

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The applicable Development Plan is the Donegal Development Plan 2024-2030 which was adopted on 16<sup>th</sup> May 2024, and came into effect on 27<sup>th</sup> June 2024.<sup>1</sup>

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<sup>1</sup> Save for any provisions which may be subject to a Draft Ministerial Direction

The Site lies within an Area of Moderate Scenic Amenity with reference to Map 11.1. Scenic Amenity.

Objective and Policies of relevance are as follows:

- Objective L-O-1 : To protect, manage and conserve the character, quality and value of the Donegal landscape.
- Policy L-P-2 To protect areas identified as 'High Scenic Amenity' and 'Moderate Scenic Amenity' on Map 11.1 'Scenic Amenity'. Within these areas, only development of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape may be considered, subject to compliance with other relevant policies of the Plan.

## Chapter 16 Technical Standards

### 5.2. Natural Heritage Designations

- 5.2.1. The nearest designated site is the River Finn SAC (Site Code 002301) which is located 500m to the south-east of the site at its closest point.

### 5.3. EIA Screening

- 5.3.1. 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. I refer the Board to Appendix 1.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. 1 no. appeal has been submitted from Wild Ireland Defence CLG (received 19<sup>th</sup> March 2024). This is summarised below:
- Planner failed to carry out an AA Screening as required.

- Reference is made to relevant case law – Kelly V An Board Pleanála [2014] IHEC 400 (25 July 2014) – extracts of associated Judgement included

## **6.2. Applicant Response**

6.2.1. None.

## **6.3. Planning Authority Response**

6.3.1. A response from the PA to the appeal was received on 14<sup>th</sup> April 2024. This is summarised below:

- Note that page 10 to 15 of the Planner's recommendation contains an AA Screening Report.
- Attached as Appendix A.
- Otherwise, Council wishes to rely on the contents of the Planner's Report (dated 23<sup>rd</sup> February 2024).

## **6.4. Observations**

6.4.1. None.

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. 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 issues on this appeal relate to the following:

- Principle of the Development
- Visual Impact/Impact on Landscape
- Architectural and Archaeological Heritage
- Appropriate Assessment (considered in Section 8 and Appendix 2 of this report)

### **7.2. Principle of Development**

- 7.2.1. The site is located within a rural area where the predominant land use is agriculture. The wider landholding includes an existing agricultural complex. I am satisfied that this agricultural proposal is consistent with nature of the site and the use is acceptable in principle.

### **7.3. Visual Impact/Impact on Landscape**

- 7.3.1. I note that the Development Plan sets out three distinct Landscape Character Classifications – ‘Areas of Especially High Scenic Amenity’, ‘Areas of High Scenic Amenity’ and ‘Areas of Moderate Scenic Amenity’. The site falls within an area of ‘Moderate Scenic Amenity’. These are defined within the plan as primarily landscapes outside Local Area Plan Boundaries and Settlement framework boundaries, that have a unique, rural and generally agricultural quality. These areas have the capacity to absorb additional development that is suitably located, sited and designed subject to compliance with all other objectives and policies of the Plan.
- 7.3.2. Policy L-P-2 states that *inter alia* within these areas, only development of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape may be considered, subject to compliance with other relevant policies of the Plan.
- 7.3.3. As noted above, that the proposed development is within an existing established agricultural farmyard. The proposed shed is 196.7 sq. m in area, with a maximum ridge height of 6.8m which slopes down to 4.3m at the eaves. It has a depth of 24.1m and a width of 8.3m. Having regard to the established nature of the existing farmyard, and to the scale and height of the proposed shed, and its location proximate to the existing farmyard, I am satisfied that the development will not result in an adverse impact on the visual or scenic amenity of the area. The immediate receiving landscape is an existing farmholding. The proposed shed would appear as a moderate extension to same, and would integrate adequately within the landscape, and would not detract from the value of same, in my view. Overall, I consider the development is in accordance with Objective L-O-1 and Policy L-P-3 of the CDP.

### **7.4. Archaeological Heritage**

- 7.4.1. I note that the Planning Authority have imposed a condition as relates to archaeological monitoring as it is stated site lies within an area of archaeological potential around recorded monuments DG 078-023001(Bullan Stone) and DG (078-

023002 (Souterrain). In relation to same, and with reference to the Historic Environment Viewer Mapping, I note that the 'SMR Zone' around DG (078-023002 (Souterrain) partially intersects with the existing shed, to the east of the proposed slatted shed. This area lies outside the red line boundary of the site. Neither zone intersects with the site area. As such, I am not of the view that archaeological monitoring is warranted in this instance and I am not recommending that this condition be reimposed, should the Board be minded to grant permission.

## **8.0 AA Screening**

- 8.1.1. Please refer to Appendix 2 (AA Screening) of this report which contains an AA Screening Report where I have concluded the following:
- 8.1.2. In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended), and on the basis of objective information, I conclude that 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. It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is not required.
- 8.1.3. This conclusion is based on:
  - Standard pollution controls that would be employed regardless of proximity to a European site, and effectiveness of same.
  - The European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 and the requirement of the proposed development to be constructed and operated in accordance with same.
  - Distance from European Sites.
- 8.1.4. No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

## **9.0 Recommendation**

- 9.1.1. I recommend that permission is Granted for the following reasons and considerations.



## 10.0 Reasons and Considerations

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

## 11.0 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.

**Reason:** In the interest of clarity.

2. The use of the proposed building shall be for agricultural purposes only.

**Reason:** In the interest of clarity.

3. The structure herein permitted shall be constructed and finished in a manner that is consistent in appearance with the adjoining agricultural structures within the existing farmyard complex.

**Reason:** In the interest of visual amenity.

4. 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).

**Reason:** In the interest of public health and residential amenity.

5. 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.

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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Rónán O'Connor  
Senior Planning Inspector

11<sup>th</sup> July 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	319349-24		
<b>Proposed Development Summary</b>	Construction of a new agricultural slatted shed, associated effluent tank and all associated site works.		
<b>Development Address</b>	The Bower, Killygordan, Co. Donegal.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	
<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>			
<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>No</b>	X		No EIAR or Preliminary Examination required
<b>Yes</b>			

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Appendix 2 – AA Screening

### Screening for Appropriate Assessment Screening Determination

#### Description of the project

I have considered the proposed development in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

The proposed development comprises the construction of a new agricultural slatted shed, associated effluent tank and all associated site works.

The subject site is located 0.5km north-east of the River Finn SAC (site code 002301) at its closest point.

With reference to EPA mapping<sup>2</sup>, there is no named watercourse running through or directly adjacent to the site. The nearest EPA mapped watercourses are the Millinagar River (c567m west of the site) and the Kiltown River (c535m east of the site). There is a stream located approximately 30m to the west of the site, at its closest point. Roof drainage from the proposed slatted shed is to connect to the existing storm drainage network which discharges to this stream. It is proposed to collect all contaminated storm drainage from hard surfaces in underground tanks.

I note the grounds of the third-party appeal which state that the Planner failed to carry out an AA Screening as required. Reference is made to relevant case law – Kelly V An Board Pleanála [2014].

The response from the PA notes that page 10 to 15 of the Planner's recommendation contains an AA Screening Report, which is attached as Appendix A of the Council's response.

#### Potential impact mechanisms from the project

The elements of the proposed development that would potentially generate a source of impact are:

- The shed structure and its construction

<sup>2</sup> <https://gis.epa.ie/EPAMaps/AAGeoTool>

- The slurry tank construction and its management
- Run-off and surface water and general yard and farm management

While there is no immediately apparent direct surface water hydrological connection to the River Finn SAC, there is the possibility that the stream that runs approximately 30m to the east of the site may eventually drain to the River Finn SAC (either directly or via other surface water bodies). I would note the existing surface water drainage network drains to this stream. As such, potential impact mechanisms include those from surface water pollution from construction works (silt/ hydrocarbon/ construction related), resulting in a deterioration of water quality. At operational stage, the spillage of effluent from the shed and/or the associated underground tank could impact on surface water bodies, as could additional contaminated surface water runoff from additional hard standing areas.

With reference to EPA mapping, the proposed slatted shed sits above the same groundwater body (Ballybofey GWB) as the River Finn SAC and, as such, groundwater pollution, as a result of construction activity and operational activity, is a potential impact mechanism. I would note that the 'Meentygrannagh Bog SAC' and 'Cloghernagore Bog and Glenveagh National Park SAC' also sit above the same groundwater body. However, 'Meentygrannagh Bog SAC' lies approximately 21km from the site and 'Cloghernagore Bog and Glenveagh National Park SAC' lies approximately 26.2 km from the site and, as such, I am not of the view that that any potential groundwater pollution that could result from the proposed development would impact on these latter two sites, given the distances set out above.

There is no evidence on file that the site supports significant populations of otters, a qualifying species of the River Finn SAC, nor is there evidence that the stream running c30m to the east of the site support significant populations of otter or salmon, both qualifying species of the River Finn SAC. Therefore, any potentially significant *ex-situ* impacts on species associated with the River Finn SAC can be ruled out.

There are no other readily apparent impact mechanisms that could arise as a result of this project.

## European Sites at risk

Table 1 European Sites at risk from impacts of the proposed project

Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
Indirect surface water pollution	Existing stream 30m to the east of the site which may eventually drain to the River Finn SAC via surrounding surface water bodies.	River Finn SAC (site code 002301).	<p>Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110]</p> <p>Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</p> <p>Blanket bogs (* if active bog) [7130]</p> <p>Transition mires and quaking bogs [7140]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Lutra lutra</i> (Otter)</p>

Indirect groundwater pollution	Groundwater via the Ballybofey GWB.	River Finn SAC (site code 002301).	<p>Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110]</p> <p>Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</p> <p>Blanket bogs (* if active bog) [7130]</p> <p>Transition mires and quaking bogs [7140]</p>
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#### River Finn SAC.

With reference to the relevant Site Synopsis document on the NPWS website, this site comprises almost the entire freshwater element of the River Finn and its tributaries the Corlacky, the Reelan sub-catchment, the Sruhamboy, Elatagh, Cummirk and Glashagh, and also includes Lough Finn, where the river rises. The spawning grounds at the headwaters of the Mourne and Derg Rivers, Loughs Derg and Belshade and the tidal stretch of the Foyle north of Lifford to the border are also part of the site. The Finn and Reelan, rising in the Bluestack Mountains, drain a catchment area of 195 square miles.<sup>3</sup>

#### **Step 4: Likely significant effects on the European site(s) ‘alone’**

**Table 2: Could the project undermine the conservation objectives ‘alone’**

<sup>3</sup> A full synopsis is available at <https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002301.pdf>



European Site and qualifying feature	Conservation objective (summary) <sup>4</sup>	Could the conservation objectives be undermined (Y/N)?	
		Indirect surface water pollution	Indirect groundwater pollution
River Finn SAC			
Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110]	To restore the favourable conservation condition of Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) in River Finn SAC	No. see discussion below	No. see discussion below
Northern Atlantic wet heaths with Erica tetralix [4010]	To restore the favourable conservation condition of Northern Atlantic wet heaths with Erica tetralix in River Finn SAC	No. See discussion below	No. see discussion below
Blanket bogs (* if active bog) [7130]	To restore the favourable conservation condition of Blanket bogs (*if active bog) in River Finn SAC.	No. See discussion below	No. see discussion below

<sup>4</sup> Full version is available at [https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO002301.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002301.pdf)

Transition mires and quaking bogs [7140]	To restore the favourable conservation condition of Transition mires and quaking bogs in River Finn SAC	No. See discussion below	No. see discussion below
Salmo salar (Salmon) [1106]	To maintain the favourable conservation condition of Atlantic Salmon in River Finn SAC	No. See discussion below	No. See discussion below
Lutra lutra (Otter)	To maintain the favourable conservation condition of Otter in River Finn SAC	No. See discussion below	No. See discussion below

In relation to surface water quality, I would note that, at construction stage, standard best practice construction measures will prevent pollutants entering the stream c30m to the east of the site, which could occur via the existing surface water drainage network. Even if these standard construction measures should not be implemented or should they fail to work as intended, the potential indirect hydrological link represents a weak ecological connection, in my view, given the potential hydrological distance to the River Finn SAC (which is greater than 500m). As such, any pollutants that should enter the stream will be subject to dilution and dispersion, rendering any significant impacts on water quality within the River Finn SAC unlikely. At operational stage, effluent generated within the slatted shed is directed to the underground tank. I note that this will be designed and sealed in accordance with the

European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended. In this manner water quality within the River Finn SAC will be protected.

Contaminated storm water from hardstanding outside of the shed will be directed to underground tanks. The detailed design of this storm water system will be designed to the satisfaction of the Planning Authority and this drainage system will be designed so as to prevent contaminated storm water entering the surface water drainage system. As such, any significant impacts on water quality within the River Finn SAC, resulting from contaminated surface water run-off are unlikely. The imposition of this condition is a standard pollution control measure and would be imposed on any development of this nature, notwithstanding any proximity to, or any hydrological connections to, a Natura 2000 site, and is not a mitigation measure that is designed specifically to avoid impacts on any Natura 2000 site.

In relation to potential groundwater impacts, I would note that the proposal would not require significant excavations, save for limited groundworks associated with the construction of the shed, which includes regrading of the site. Best practice construction measures will serve to protect groundwater. Even if these measures should fail, this indirect hydrological link via groundwater also represents a weak ecological connection, given the distance to the River Finn SAC (which is c500m from the site at the closest point). As such any pollutants from the site that should enter groundwater during the construction stage, via spillages onto the overlying soils, or via spillages into the surrounding drains, will be subject to dilution and dispersion within the groundwater body, rendering any significant impacts on water quality within the River Finn SAC unlikely.

At operational stage, and as per the discussion of surface water impacts, the underground tank is required to be designed and sealed in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2022 and in this manner groundwater quality will be protected.

I would note that the best practice measures that would be adhered to at construction stage, and the relevant regulations and standard conditions that will be required to be adhered to at operational stage, are not mitigation measures intended to reduce or avoid any harmful effect on any Natura 2000 site and would be

employed by any competent operator, notwithstanding any proximity to any Natura 2000 site.

Having regard to the discussion above, I conclude that the proposed development would have no likely significant effect 'alone' on any qualifying features of the River Finn SAC. Further AA screening in-combination with other plans and projects is required.

#### **Likely significant effects on the European site(s) 'in-combination with other plans and projects'**

There is no evidence on file of any plans or projects that are proposed or permitted that could impact in combination with the proposed development and as such no in-combination issues arise.

I conclude, therefore, that the proposed development would have no likely significant effect in combination with other plans and projects on the qualifying features of any European sites. No further assessment is required for the project.

#### **Overall Conclusion- Screening Determination**

In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information I conclude that 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. It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is not required.

This conclusion is based on:

- Standard pollution controls that would be employed regardless of proximity to a European site, and effectiveness of same.
- The European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 and the requirement of the proposed development to be constructed and operated in accordance with same.
- Distance from European Sites.

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.