



An
Bord
Pleanála

Inspector's Report

ABP-319558-24

Development	Construction of soiled water and effluent tank and ancillary works
Location	Beheens West, Listowel, County Kerry,
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	23/60077
Applicant(s)	Pat and David Trant
Type of Application	Planning Permission
Planning Authority Decision	Notification to Grant
Type of Appeal	Third Party
Appellant(s)	Peter Sweetman
Observer(s)	None
Date of Site Inspection	6 th February 2025
Inspector	Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 3.05 hectares and is located within the rural townland of Beheens West, County Kerry, which is located approximately 5km south of the town of Listowel. The site comprises of an existing established dairy farm complex. Access to the site is via a local road. The Smearlagh River is located approximately 500 metres southeast of the site.
- 1.2. The site is located approximately 400 metres northwest of the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165) and approximately 900 metres northeast of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (SPA) (Site Code 004161).

2.0 Proposed Development

- 2.1. Permission is sought to construct a soiled water and effluent tank complete with a rain cover, 1 no. sump tank, 2 no. agitation points and all ancillary site works. The tank will be built to a height of 7.24 metres and will measure 30.74 metres in diameter. The external finishes will comprise of dark blue/green fibre-glass coated metal sheets and the floor of the tank will comprise of concrete. The capacity of the tank will be 4,175m³. The tank will be sited next to an existing 4,175m³ effluent tank located at the southeast corner of the farmyard.
- 2.2. The applicant states that the purpose of the development is to provide extra storage of slurry, soiled water and effluent in the event of inclement weather in the Spring or Autumn which would require cattle to be kept indoors for longer periods. The development will also prevent having to spread slurry before the soil temperatures start to rise in Spring, thereby, preventing any leaching and soil run-off of nutrients.
- 2.3. It is also proposed to plant a mixture of trees on a 2 metre high earthen bank south west of the site. The application has been accompanied by an appropriate assessment screening report.

3.0 Planning Authority Decision

3.1. Decision

The planning authority (PA) decided to grant permission by Order dated 4th April 2024, subject to a number of conditions.

- Condition no. 4 required landscaping to be carried out in accordance with the landscaping scheme submitted as part of the application.
- Condition no. 5(e) prohibited any polluting matter from the development to enter any watercourse.
- Condition no. 5(f) required the management of all farmyard manures, slurries and soiled water to be in full compliance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022.

3.2. Planning Authority Reports

Planning Report

There is 1 no. area planner (AP) report on file which assessed the proposed development in terms of issues raised by the third party, visual impact, surface water disposal and the Water Framework Directive. Further information was sought for the applicant to submit an appropriate assessment screening report and landscaping proposals along the south boundary of the farmyard. After submission of the further information (including the AA screening report), the AP recommended a grant of permission, subject to conditions. This was endorsed by the Senior Executive Engineer. An Environmental Impact Assessment (EIA) preliminary examination was undertaken and the AP concluded that the proposal did not require EIA or EIA screening.

Other Technical Reports

- Environmental Assessment Unit (reports dated 29/09/2023 and 04/03/2024) – The Ecologist undertook an AA screening and determined that the proposed works, individually or in combination with other plans/projects, would not likely have a significant effect on a European site, and that a stage 2 AA was not

required. The reasoning was due to, inter alia, the limited duration and scale of duration works, the absence of any potential pathway as the site is surrounded by grassland and landscape features which would trap sediment, the absence of any drainage features at the site providing a direct connection to any significant water feature, the distance to the SAC and to the standard agricultural practices required by the Good Agricultural Practice Regulations 2022.

- County Archaeologist (report dated 11/08/2023) – This report noted that there were no recorded monuments in proximity to the site and therefore no mitigation was required.

3.3. Prescribed Bodies

Development Applications Unit (DAU) of Department of Housing, Local Government and Heritage

This report (dated 21/12/2023) recommended that an appropriate assessment screening report was submitted to assess the direct and indirect impact on water quality in the Lower River Shannon SAC during the construction and operational phases. No impact was anticipated on the SPA due to the separation distance. After submission of the further information, the DAU did not submit any further comments.

3.4. Third Party Observations

There was 1 no. third party submission on the application from Peter Sweetman & Associates, which raised concerns with the vague description of the development, the requirement to screen the development for EIA and the PA's requirements under the Habitats Directive and Water Framework Directive.

4.0 Relevant Planning History

PA ref. 21/1066 (subject farmyard)

Permission was granted for a cattle slatted cubicle house with slurry tanks and ancillary works.

PA ref. 20/1204 (subject farmyard)

Permission was granted for a slatted cubicle house with overground slurry tower with sump tank and roof.

PA ref. 15/437 (subject farmyard)

Permission was granted for the erection of a milking parlour complex and silage concrete apron.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

It is an objective of the Council to:

KCDP 11-1 Ensure that the requirements of relevant EU and national legislation, are complied with by the Council in undertaking its functions, including the requirements of the EU Birds and Habitats Directives.

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.

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.

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 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

5.3. **Regional Policy**

- Regional Spatial and Economic Strategy for the Southern Region

5.4. **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 400 metres southeast of the site. The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (SPA) (Site Code 004161) is located approximately 900 metres southwest of the site.

5.5. **Environmental Impact Assessment (EIA) Screening**

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 in this regard.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A third-party appeal from Mr. Peter Sweetman of Wild Ireland Defence CLG was received by the Board on 19th April 2024. The grounds of appeal are summarised as follows:

- The planning authority or the submitted NIS did not examine the spreading of the slurry from this development. The tank is 0.58km from the Lower River Shannon SAC which is designated for Freshwater Pearl Mussel and this was not considered in the NIS nor by the PA.
- The Board is now the competent authority to screen the development and make a decision under Article 6(3) of the Habitats Directive. The legal requirement for screening is not to establish such an effect, it is merely necessary to determine that there may be such an effect. The possibility of there being a significant effect will generate the need for an AA.
- It is not possible for the Board to make a decision to grant permission due to a lack of certainty in the information submitted. An assessment under Article 6(3) 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

A response from the applicant to the grounds of appeal was received by the Board on 10th May 2024. The response is summarised as follows:

- The decision to increase the storage capacity on the farm is to ensure that water quality is improved. The application would allow the storage of soiled water until weather conditions are at an optimum condition to spread thereby providing more options to spread at a suitable time. Variable climate weather patterns are becoming more common.
- The applicant's herd size has been static for the last number of years. It is not a growing herd or a green field site.
- The applicant has leased land to increase its land base to allow a larger area to be spread, however, the volume is the same from the static herd. There is sufficient storage on the farm to comply with present legislation.

6.3. Planning Authority Response

The PA did not issue a response to the grounds of appeal.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local, regional and national policies and guidance, I consider that the substantive issue in this appeal to be considered is in relation to Appropriate Assessment (AA).
- 7.2. In the interest of clarity, the Board should note that there was no Natura Impact Statement (NIS) submitted as part of this application or appeal. The applicant submitted an Appropriate Assessment Screening Report (AASR) as part of the response to the further information request of the planning authority (PA). The PA undertook its own screening for AA and determined that the project would not likely have a significant effect on a European site and that a stage 2 AA / NIS was not required.

Appropriate Assessment Screening Determination

(Stage 1, Article 6(3) of Habitats Directive)

- 7.3. I have considered the proposed development of a soiled water and effluent tank in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. The proposed development will comprise of a 4,175m³ effluent tank located within the southeast corner of the existing farmyard and will comprise of a rain cover, sump tank and agitation points.
- 7.4. As stated above, an AASR was submitted by the applicant as part of the further information response and the biodiversity officer of the PA determined that the proposed works, individually or in combination with other plans/projects, would not likely have a significant effect on a European site, and that a stage 2 AA was not required. The Development Applications Unit of the Department of Housing, Local Government and Heritage was consulted and it requested further information in the form of a AASR. The Board should note that it did not issue a further response following the submission of the AASR.

European Sites

- 7.5. The proposed development site is not located within any European site, however, it is located approximately 400 metres northwest of the Lower River Shannon SAC (Site

Code 002165). The SAC boundary at this location encompasses the Smearlagh River which flows northeast for approximately 6km where it connects with the River Feale, southeast of Listowel. The River Feale flows approximately 25km westwards where it discharges into Cashen Bay, south of Ballybunnion. The subject site is also located approximately 900 metres northeast of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code 004161).

- 7.6. Having inspected the site and surrounding lands, having reviewed the Environmental Protection Agency's (EPA) AA mapping tool and the submitted AASR, I have identified no direct connections between the subject site and the SAC or SPA. There are no watercourses or streams providing any hydrological link to the SAC or SPA. A drainage ditch was identified within the AASR, however, this is located approximately 200 metres from the proposed works. Furthermore, the subject site is separated from the European sites by a substantial amount of agricultural lands and hedgerow/vegetation.

Table 7.1: List of European sites within potential zone of influence

European Site	Qualifying Interests	Distance	Connections
Lower River Shannon SAC	21 QIs https://www.irishstatutebook.ie/eli/2023/si/328/made/en/pdf	c.400 metres	No direct connections.
Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA	<ul style="list-style-type: none"> Hen Harrier (Circus cyaneus) [A082] 	c.900 metres	No direct connections.

Likely Impacts of the project (alone or in-combination)

- 7.7. Due to the location of the development site next to an established farm complex and to the presence of a significant buffer area between the site and the SAC and SPA, I consider that the proposed development would not be expected to generate impacts

that could affect anything but the immediate area of the development site, thus having a very limited potential zone of influence on any ecological receptors.

- 7.8. During site works, possible impact mechanisms of a temporary nature include generation of noise, dust and construction related emissions to surface water. However, due to the absence of any direct ecological connections or pathways and distance from receiving features connected to the Lower River Shannon SAC and Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA, I consider it highly unlikely that the proposed development could generate impacts of a magnitude that could affect European sites.

Land spreading

- 7.9. I acknowledge the appellant's concerns regarding the issue of slurry spreading not being examined in the AA process. However, the Board should note that 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 (16th 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.

Likely significant effects on the European sites in view of the conservation objectives

- 7.10. I consider that the construction or operation of the proposed development will not result in impacts that could affect the conservation objectives of the SAC or SPA. Due to the absence of any hydrological connection, there is no potential for any surface water run-off laden with silt or pollutants to enter the SAC or SPA. Furthermore, due to the distance and lack of meaningful ecological connections there will be no changes in ecological functions due to any construction related emissions or disturbance.
- 7.11. In relation to any potential ex-situ effects on the hen harrier (A082), given the scale of the development, to the absence of any suitable foraging or nesting habitat within the site as concluded in the AASR, to the location next to an established farm complex

and to the nature of the site comprising of agricultural land, I do not consider it likely that any temporary noise or human disturbance that may occur during the construction phase would result in any significant effect on the conservation objective for this qualifying interest (QI).

7.12. I note the appellant's concerns regarding the impact of the development on the freshwater pearl mussel (1029) which is a QI of the Lower River Shannon SAC. Having regard to my conclusions under paragraph 7.10 above, I consider that there is no potential for any significant effect on the conservation objective for this QI. Notwithstanding this, having reviewed Map 15 of the National Parks and Wildlife Service's (NPWS) Conservation Objectives supporting document (2012) for the Lower River Shannon SAC¹, I note that the distribution and habitat of QI 1029 within this SAC is located within the Cloon River in County Clare where there is no direct connection between this waterbody and the Smearlagh River/River Feale.

In-combination effects

7.13. Having reviewed the Department of Housing, Local Government and Heritage's National Planning Application database and EIA Portal and Kerry County Council's planning register, I consider that the proposed development will not result in any effects that could contribute to an additive effect with other developments in the area. No mitigation measures are required to come to these conclusions.

Overall Conclusion: Screening Determination

7.14. Having carried out Screening for Appropriate Assessment of the project in accordance with Section 177U of the Planning and Development Act 2000 (as amended), I have determined that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Sites namely, the Lower River Shannon SAC (Site Code 002165) and the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code 004161) or any other European site, in view of the sites conservation objectives. Appropriate Assessment (AA), and submission of a NIS is not therefore required.

7.15. This determination is based on:

- The absence of any hydrological link to any European site.

¹ https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002165.pdf

- The separation distance and intervening land uses between the site and the European sites.
- 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.
- Taking into account the screening determination of the environmental assessment unit of the PA.

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

8.0 Recommendation

I recommend to the Board that permission is **Granted**, subject to conditions, for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development within an established agricultural farmyard, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of public health and environmental sustainability. The proposed development would be in accordance with objectives KCDP 9-53 and KCDP 9-56 of the Kerry County Development Plan 2022-2028 and would, therefore, be in accordance with the proper planning and sustainable 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, as amended by the further plans and particulars received by the planning authority on the 7th day of February 2024 and 8th March 2024, 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 structure shall be used for agricultural purposes only.

Reason: In the interest of orderly development.

3. The structure shall be constructed and finished in a manner that is consistent in appearance with the adjoining effluent tank 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 to ground in appropriately sized soakaways, 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.

6. (a) The spreading of slurry or manure from this facility shall comply with the requirements of the European Union (Good Agricultural Practices for the Protection of Waters) Regulations 2022, or as otherwise updated.

(b) If slurry or manure is moved to other locations off the farm, the details of such movements shall be notified to the Department of Agriculture, Food and Marine, in accordance with the above Regulations.

(c) Where a third party removes the slurry or manure, the details of the agreement shall be submitted to the local authority where the waste material is to be disposed to.

Reason: To ensure the satisfactory disposal of waste material, in the interest of amenity, public health and to prevent pollution of waters.

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.

Gary Farrelly
Planning Inspector

18th February 2025

Appendix 1: EIA Pre-Screening

An Bord Pleanála Case Reference		ABP-319558-24	
Proposed Development Summary		Soiled water and effluent tank	
Development Address		Beheens West, Listowel, County Kerry	
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 Proceed to Q2.
			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)?			
Yes			Proceed to Q3.
No	X		No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No			Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			
No		Pre-screening determination conclusion remains as above (Q1 to Q4)	
Yes		Screening Determination required	