



An
Bord
Pleanála

Inspector's Report

ABP-320102-24

Development	Milking complex including slurry tank with associated site works.
Location	Garrynagore, Lixnaw, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	24/68
Applicant(s)	Dan O'Mahony
Type of Application	Planning Permission
Planning Authority Decision	Notification of Grant
Type of Appeal	Third Party
Appellant(s)	Mr. Peter Sweetman
Observer(s)	None
Date of Site Inspection	10 th April 2025
Inspector	Gary Farrelly

1.0 Site Location and Description

The subject site has a stated area of 0.4 hectares and is located within the rural townland of Garrynagore, which is located approximately 3km southwest of the village of Lixnaw, County Kerry. The subject site comprises of an existing farmyard and agricultural lands. Access to the site is via the regional road R-557.

2.0 Proposed Development

- 2.1. Permission is sought to construct a milking complex to include a milking parlour, dairy, plant room, office, roofed slatted collecting yard with slatted slurry and soiled water tank and connection to an existing slurry tank. Also proposed is a slatted cubicle house with associated underground slurry tanks and ancillary concrete yards with a meal feed bin and associated works. The development will be sited next to an existing farmyard comprising of sheds and a slatted cattle house.
- 2.2. The ride height of the milking parlour will be 4.5 metres, with the ridge height of the slatted cubicle house being 7.99 metres. The gross floor space of the proposed works will measure 763sqm. All roof water from the proposed buildings will be connected to a watercourse to the south of the site which runs parallel with the public road.

3.0 Planning Authority Decision

3.1. Decision

The planning authority (PA) decided to grant permission by Order dated 18th June 2024 subject to 6 no. conditions.

3.2. Planning Authority Reports

Planning Reports

The area planner (AP) report assessed the development in terms of its principle, visual impact, road safety, effluent and surface water disposal, ecology and residential amenity. The first AP report recommended further information for the submission of an appropriate assessment screening report.

The second AP report assessed the submitted AA screening report and noted that farmyard management including storage capacity and application is regulated by the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2022, as amendment. A grant of permission was recommended subject to a number of conditions. This was endorsed by the Senior Executive Engineer.

Other Technical Reports

Listowel Roads Office (*report dated 27/03/2024*) – This section recommended a grant of permission subject to conditions.

Biodiversity Officer (*reports dated 04/04/2024 and 13/06/2024*) – The Biodiversity Officer originally requested the submission of an AA screening report. After submission of the screening report a screening for appropriate assessment was undertaken and concluded that the proposed development was not likely to have a significant effect on a European site and that Stage 2 AA was not required. A grant of permission was recommended subject to a condition in relation to landscaping.

Conditions

- Condition number 2 required the payment of a development contribution of €2,104.90 in accordance with the development contribution scheme.
- Condition number 5(vi) required the proposed infrastructure for the management of farmyard manures, slurries and soiled water to be in full compliance with the S.I. No. 605 of 2017, European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 or any amending regulations.
- Condition number 6 required the planting of a native hedge along the northern site boundary and the careful translocation of an existing mature white thorn tree.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

A third-party observation was received from Peter Sweetman which raised a number of concerns with the proposed development including in relation to the Habitats Directive, Environmental Impact Assessment and the Water Framework Directive.

4.0 Relevant Planning History

PA ref. 15/905 (subject site)

Permission was granted for the construction of a slatted house for livestock with underground slurry tank.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

Section 9.7.6 Agriculture, Agri-Food and Agri-Tech

It is an objective of the Council to:

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 9-57 Ensure that intensive agriculture units will only be considered where it is clearly demonstrated by the applicant to the Council that the proposed development will not give rise to negative impacts on animal welfare, the environment, natural or built heritage or residential amenity. The scale and intensity of operations, including the cumulative impact of similar type developments in close proximity, shall be clearly detailed in the application and shall inform the assessment. All applications for such

development shall be required to demonstrate that the proposal complies with the development management standards in Volume 6 of this plan.

5.2. National Policy

- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030
- Climate Action Plan (CAP) 2025 / CAP 2024

Climate Action Plan 2025 builds upon last year's Plan by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings and it should be read in conjunction with Climate Action Plan 2024.

- Ireland's 4th National Biodiversity Action Plan (NBAP) 2023-2030

The NBAP includes five strategic objectives aimed at addressing existing challenges and new and emerging issues associated with biodiversity loss. Section 59B(1) of the Wildlife (Amendment) Act 2000 (as amended) requires the Board, as a public body, to have regard to the objectives and targets of the NBAP in the performance of its functions, to the extent that they may affect or relate to the functions of the Board. The impact of development on biodiversity, including species and habitats, can be assessed at a European, National and Local level and is taken into account in our decision-making having regard to the Habitats and Birds Directives, Environmental Impact Assessment Directive, Water Framework Directive and Marine Strategy Framework Directive, and other relevant legislation, strategy and policy where applicable.

- 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. Natural Heritage Designations

The subject site is located approximately 1km south of the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165). The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (SPA) (Site Code 004161) is located approximately 3.5km east of the site.

5.4. 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 was lodged to the Board on 4th July 2024 by Peter Sweetman of Wild Ireland Defence CLG. The grounds of appeal are summarised as follows:

- The development is less than 2km from the Lower River Shannon SAC which is designated for freshwater pearl mussel.
- The planning authority's further information request did not include the High Court judgement of Mary Finley which was raised in our submission.
- The test for screening for appropriate assessment is set out in Kelly v An Bord Pleanála. The possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect it is merely necessary to determine that there may be such an effect.
- The scientific assessment within the screening for appropriate assessment is based on the wrong test.

- No appropriate assessment screening was carried out by the planning authority.

6.2. Applicant Response

The applicant issued a response to the grounds of appeal on 16th July 2024 and is summarised as follows:

- There is only one catchment within this large SAC where Pearl Mussel are potentially present, i.e. that of the Cloon River, which is in County Clare and on the other side of the River Shannon. There is no pearl mussel present in proximity to the nearest watercourse or general catchment in the region.
- The statement that the scientific assessment is based on the wrong test is not specific and it is questioned why this has not been expanded upon.
- The submitted screening report clearly shows that the development will not have a significant impact on the SAC as there is no hydrological link to the Natura 2000 site, the nearest watercourse 50 metres away is approximately 1.5km upstream from the Lower River Shannon SAC and any surface water runoff would likely permeate into the well-drained mineral soil.
- Negative impacts to the qualifying interests of the SAC are considered unlikely to arise from the operational phase of the proposed development as the activities associated with the new building already occur onsite, there will be no increase in stocking rates, the new unit will result in a greater storage capacity for effluent/slurry, all run-off will be directed to holding tanks and effluent will be spread in accordance with department of agriculture guidelines.
- Slurry spreading protocols are practices already in place on the farm and are standard required farming practices and are not mitigation measures.

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).

Screening for Appropriate Assessment

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

- 7.2. I have considered the project in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. As part of a further information request from the PA, the applicant submitted an appropriate assessment screening report (AASR) which concluded that the proposed development would not have a significant effect on any designated European Site, either individually or in combination with other plans or projects. The Biodiversity Officer of the Environmental Assessment Unit undertook a screening for appropriate assessment and concluded that the project was not likely to have a significant effect on a European site and that Stage 2 AA was not required.

European Sites

- 7.3. The proposed development site is not located within any European site, however, it is located approximately 1km south of the Lower River Shannon SAC (Site Code 002165) and approximately 3.5km west of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code 004161).
- 7.4. Having inspected the site and surrounding lands and having reviewed the submitted AASR, I note that there is a field drain located approximately 50 metres to the south of the site along the public road. I observed this to be dry and well vegetated on the date of my site inspection. This field drain connects to a stream approximately c.190 metres to the east. Having reviewed the Environmental Protection Agency's (EPA) AA mapping tool this stream flows c.500 metres northwards into the River Brick which forms part of the SAC a further c.700 metres downstream. I note that there are no watercourses or streams within the subject site providing a direct hydrological link to

the SAC or SPA. 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 (QIs)	Distance	Connections
Lower River Shannon SAC	21 QIs ¹	c. 1km	No direct connection. Indirect connection via field drain/watercourse.
Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA	Hen Harrier (Circus cyaneus) [A082]	c. 3.5km	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, to the 50 metre distance of the roadside field drain which provides an indirect connection to the Lower River Shannon SAC approximately 1.39km downstream, I consider it highly unlikely that the proposed development could generate impacts of a magnitude that could affect European sites. At operational stage, uncontaminated roof water is proposed to be diverted to the roadside drain, however, having regard to the dry and well vegetated nature of the field drain, to the hydrological distance and to the level of dilution available, no impacts are expected.

¹ <https://www.irishstatutebook.ie/eli/2023/si/328/made/en/pdf>
https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002165.pdf (Accessed 13th May 2025)

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

- 7.9. 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 direct 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.
- 7.10. 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, to the location next to an established farm complex and to the nature of the surrounding lands 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 ex-situ effect on the conservation objective for this qualifying interest (QI).
- 7.11. 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 reviewed Map 15 of the National Parks and Wildlife Service's (NPWS) Conservation Objectives supporting document (2012) for the Lower River Shannon SAC, 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 River Brick. Having regard to this and to my conclusions above, I consider that there is no potential for any significant effect on the conservation objective for this QI.

In-combination effects

- 7.12. 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.

Screening Determination

7.13. In accordance with Section 177U of the Planning and Development Act 2000, as amended, and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on the Lower River Shannon SAC (Site Code 002165) or 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 conservation objectives of these sites and are therefore excluded from further consideration. Appropriate Assessment (AA) is not, therefore, required.

7.14. This determination is based on:

- The absence of any direct hydrological link to any European site.
- The dry and well vegetated nature of the field drain approximately 50 metres south of the site, which provides an indirect hydrological connection to the SAC, to the level of dilution and filtration available and to the nature of the surface water proposed to be diverted to said field drain.
- 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.

7.15. 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 22nd day of May, 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 proposed structures shall be used for agricultural purposes only.

Reason: In the interest of orderly development.

3. The proposed development shall be designed, cited, constructed and operated in accordance with the requirements as outlined in the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2022, as amended.

Reason: In order to avoid pollution and to protect residential amenity.

4. 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 or watercourses, and

(b) All soiled waters shall be directed to a storage tank (in accordance with the requirements of the European Union (Good Agricultural Practice for the Protection of Waters (Amendment) Regulations 2022, as amended, or to a slatted 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.

5. (a) The removal of organic waste material and its spreading on land by the applicant or third parties shall be undertaken in accordance with systems of regulatory control implemented by the competent authorities in relation to national regulations pursuant to Council Directive 91/676/EEC (The Nitrates Directive) concerning the protection of waters against pollution caused by nitrates from agricultural sources.

(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 interests of amenity, public health and to prevent pollution of waters.

6. (a) The northern boundary of the site shall be landscaped using only indigenous hedging species in accordance with details which shall be submitted to and agreed in writing with the planning authority prior to commencement of the development.

(b) The existing mature white thorn tree shall be translocated into the required hedge as per (a) above. In order to increase translocation success approximately 50% of the foliage shall be removed.

Reason: In the interest of visual amenity and biodiversity.

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 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.

Declaration

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

13th May 2025

Appendix 1: EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-320102-24		
Proposed Development Summary	Milking complex including slurry tank with associated site works		
Development Address	Garrynagore, Lixnaw, 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	