



An
Bord
Pleanála

Inspector's Report

ABP-320635-24

Development	RETENTION: The permanent removal of the now demolished structures and now filled lagoon.
Location	Ballyvadin, Fethard, Co. Tipperary.
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	2460460
Applicant(s)	Maurice Regan
Type of Application	Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Patrick Heffernan
Observer(s)	None
Date of Site Inspection	22 nd October 2024
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The appeal site is situated in a rural area located approximately 4.5 km northwest of Fethard, Co. Tipperary. The site is accessed by the local road L-54133-0, and the local road terminates at the appeal site entrance.
- 1.2. The appeal site measures approximately 0.8 ha, and the site comprises of agricultural land.
- 1.3. There is a concrete hard standing with a single extant slatted shed within the site, adjacent to the site of the former buildings now demolished.
- 1.4. The site of the former lagoon is fully covered over, and the site is part of an agricultural landholding used for tillage.

2.0 Proposed Development

- 2.1. Retention permission is sought for the permanent removal of now demolished structures and now filled lagoon.
- 2.2. The structures comprise of the following;
 - A-Steel framed, corrugated sheeted, Barrell roofed hay shed with flat roofed cattle shed of combined floor area of 273.14 sq. m.
 - B-Steel framed, corrugated sheeted cattle shed of area of 197.12 sq. m.
- 2.3. The former lagoon covered an area of approximately 21m x 20m (c. 420 sq. m.) and was approximately 1.8m deep.
- 2.4. There is a concurrent appeal (appeal ref. ABP.320623.24) on the applicant's lands located c. 500m north of the appeal site. I have referred to the PA decision and the development type in paragraph 4.1 below.

3.0 Planning Authority Decision

3.1. The Planning Authority decided to grant planning permission for retention, subject to 2 no. conditions. Condition 1(b) is noteworthy.

- Condition 1(b) relates to the removal of a grey storage shed within 6 months of permission for retention granted.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's report, dated 26th July 2024, notes the following.

- The nature of the development is considered acceptable in principle.
- Grey storage shed without the benefit of a planning permission is noted on the site.
- The former lagoon was backfilled with embankment soil and levelled with soil located on the farm site.
- Proposal presents no roads related issues.
- No surface water management issues arise. Area Engineer recommends condition ensuring no surface water runoff onto public road.
- No archaeological or architectural heritage features on site or within vicinity of the site.
- No flood risk issues arise.
- AA Screening determined that AA is not required.
- EIA not required.
- An observation raises third-party ownership rights.
- The third-party ownership concerns are dismissed having regard to section 5.13 of the Development Management Guidelines, 2007, and section 34(13) of the P&D Act.
- Development contribution not required.

3.2.2. Other Technical Reports

- None

3.3. **Prescribed Bodies**

- None

3.4. **Third Party Observations**

There was one observation received during the course of the planning application. The issues raised can be summarised as follows.

- Concerns in relation to the applicant's land ownership in respect to the application.

4.0 **Planning History**

4.1. Concurrent Appeal

- Planning Authority Reg. Ref. 24/60458 (appeal ref. ABP-320623-24)

Retention permission granted by PA, subject to conditions, for the permanent removal of the now demolished structures and now filled lagoon. The application is currently a live third-party appeal before the Board.

4.2. **On-applicants landholding** (note: Planning Authority Reg. Ref. 201069 relates to the site of the now demolished structures)

- Planning Authority Reg. Ref. 201069.

Extension of duration granted to replace and extend the roofs on the existing cubicle shed and to construct a new loose livestock shed and all associated site works. (Previous reference 15/600391).

- Planning Authority Reg. Ref. 15600247; ABP PL.92.245051

Permission granted, subject to condition, to replace and extend the roofs on the existing cubicle shed and to construct a new loose livestock shed and all associated site works.

- Planning Authority Reg. Ref. 15/600391

Conditional permission granted to replace existing livestock sheds with a single cubicle shed and associated works.

- Planning Authority Reg. Ref. 07/1213

Permission granted for Geo-membrane lined slurry /effluent store, stand-off pad and ancillary works.

5.0 Policy Context

5.1. Tipperary County Development Plan, 2022 – 2028

- 5.1.1. Chapter 8 'Enterprise and Rural Development' refers in section 8.4.1 to agriculture. The Plan supports the sustainable expansion of agriculture and horticulture, where it is demonstrated that it respects the natural functions of the environment, including water systems and ecology.

- 5.1.2. Chapter 10 'Renewable Energy and Bioeconomy' includes a relevant policy for the development. Policy Objective 10-3 states as follows:

'Support and facilitate the development of a sustainable and economically efficient agricultural and food sector and bioeconomy, balanced with the importance of maintaining and protecting the natural services of the environment, including landscape, water quality and biodiversity'.

- 5.1.3. Chapter 11 'Environment and Natural Assets' includes a relevant policy for the development. Policy Objective 11-14 states as follows:

'Ensure that proposals for agricultural developments, as appropriate, comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 or any amendment thereof'.

- 5.1.4. Chapter 13 'Built Heritage'. The CDP provides protection for buildings and structures in the Record of Protected Structures (Vol. 4).

5.2. Natural Heritage Designations

- Lower River Suir SAC (Site Code 002137) c. 5.3km southeast
- River Barrow and River Nore SAC (Site Code 002162) c. 13.7 km northeast.
- Power's Wood pNHA (Site Code 000969) c. 0.7km southwest

6.0 EIA Screening

The 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 screening determination. Refer to Form 1 in Appendix 1 of report.

7.0 The Appeal

7.1. Grounds of Appeal

The grounds of appeal may be summarised as follows.

- The landownership registration in respect of the application site is incorrect.
- Appellant claims ownership of the subject lands.
- Appellant has not consented to the subject planning application.
- The question of ownership is currently challenged and before the courts.
- The Board are requested not to decide the outcome of this appeal until the ownership question has been determined.
- The filled lagoon has been illegally filled with deleterious and hazardous materials, including plastics, tyres, concrete, metals, drums and timbers.
- It is submitted that the illegal dumping was carried out without an appropriate waste licence.

- Photographs are included with the appeal submission illustrating the nature of the materials dumped in the lagoon.

7.2. Applicant Response

The following is a summary of the applicant's response to the appeal submission.

- The applicant purchased the relevant lands, the subject of this application, in March 2022.
- The response includes land registry folios supporting the applicants claim to ownership of the relevant lands.
- Applicant refutes appellants claims in relation to filling the lagoon with waste. The response includes an Environmental Assessment and Waste Classification Report of the former lagoon site. The Environmental Assessment and Waste Classification Report is summarized as follows;
 - Purpose of report is to undertake exploratory investigations to investigate the presence of alleged waste dispositions on the subject site.
 - Where waste is encountered or suspected it is proposed to collect representative soil samples.
 - Exploratory works undertaken on 14th May 2024, and witnessed by a representative from Tipperary County Council.
 - Site inspection confirmed that the site did not exhibit any obvious evidence or reworking.
 - Anecdotal information indicates that the site of the former lagoon has been excavated, backfilled and returned to agricultural land.
 - It was alleged that potentially deleterious waste materials were deposited into this excavated area during backfilling.
 - Exploratory works were targeted to the former lagoon with additional trial pits progressed in peripheral areas to confirm presence / absence of waste.

- The bedrock beneath the site is mapped as Ballyadams Formation and is described as crinodial wackestone/packstone limestone.
- The Clonmel groundwater body was assigned good status in 2021.
- The nearest surface water feature is river Clashawley is 0.649km east of site.
- A total of 5 no. trial pits were excavated to a maximum depth of 3.4m below ground level. Peripheral exploratory works also undertaken.
- A series of stockpiled material were located along the northern boundary comprising of manure, one of predominantly soil and stones with occasional incidental C&D waste. Another stockpile comprised of concrete blocks and fragments believe to derive from the two former sheds demolished on the site.
- Samples were taken from the stockpiles to inform waste classification in the event that any surplus materials are required for offsite disposal to inform future waste management.
- A description of encountered ground in the trial hole excavations was undertaken, and the ground conditions is presented in Table 3-1 of the report.
- Generally, all the exploratory locations were observed to be characteristic of natural or reworked soils and no evidence of waste disposition was observed, except for trial hole excavation TP09.
- Made ground or suspected made ground was observed at TP09 believed to be associated with the demolition of a former farm building.
- Based on trial pit excavations samples for laboratory analysis or waste classifications were required for trial hole TP09 only and also from stockpiled materials to inform waste classification.
- A total of 3 no. samples were selected for laboratory analysis.
- Soil samples were screened and analysed with respect to the relevant Generic Assessment Criteria (GAC) for soil to assess risk to health.

- Where substances in soil are reported at concentration below the GAC for the specified land use said substances are not considered to present a risk to human health.
- In summary the soil analytical results confirmed that soil samples are below relevant residential GACs and are not considered to present a risk to human health.
- Review of conceptual site model concludes no significant or potentially significant exposure to source/pathway are evident between soils and current and future site users. An absence of contamination in soils supports an absence of source for groundwater / surface water contamination via leaching.
- The source / pathway is therefore considered absent with no risk identified for the wider environment.
- A waste classification was undertaken to assess the chemical nature of the soils to support compliant off-site disposal.
- All samples have been classified as non-hazardous based on chemical analytical results and in accordance with EPA guidance *Soil Waste Classification and Categorisation Criteria*¹.
- Two soil samples tests are considered suitable for acceptance to inert landfill as determined by WFD and are categorized as B1 inert. One sample meets the Soil Recovery Facility Waste Acceptance Criteria.
- The response submission includes correspondence from the Environment Department of the Council confirming the applicant has adequately addressed their concerns.
- All materials evident in the appellant's submitted photographs were removed before lagoons were filled. The removed material was retained and inspected by the Council's Environment Department.

¹ Table 5.2 of the Waste Classification Assessment.

7.3. Planning Authority Response

- None

7.4. Observations

- None

8.0 Assessment

Having examined the application details and all other documentation on file, including reports of the Planning Authority, carried out a site inspection, and having regard to the relevant local/regional/national policies and guidance, I consider that the key issues on this appeal are as follows:

- Principle of Development
- Landownership
- Filling of Lagoons
- Other Matters

8.1. Principle of Development

- 8.1.1. The development before the Board relates to the retention of the permanent removal of now demolished structures and now filled lagoon. The development is to consolidate an existing agriculture enterprise and is located within an existing farm in a rural area where the predominant land use is agriculture.
- 8.1.2. The Tipperary County Development Plan, 2022 – 2028, supports the sustainable expansion of agriculture and horticulture (Policy Objective 10-3), where it is demonstrated that it respects the natural functions of the environment, including water systems and ecology.
- 8.1.3. Accordingly, on the basis of the established agricultural use on the site and in light of the scale of the development and the intended use of the site for agricultural

purposes, I would consider that the development is acceptable in principle at this location.

8.2. Landownership

- 8.2.1. The principle issue in this appeal is the claim by the third-party appellant that the applicant does not have the consent of the landowner to proceed with the planning application. The appellant also claims ownership in respect of the application site, however I would note that this claim is not substantiated by any documentary evidence.
- 8.2.2. However, in contrary to the appeal submission assertion I would note from Question 10 (legal interest) of the submitted planning application form that the applicant submits that he is the owner of the application site.
- 8.2.3. The applicant's response submission includes a solicitor's letter which submits that the applicant is the relevant landowner of the application site, and this is supported by Land Register Folios.
- 8.2.4. I would therefore consider, on the basis of information available, that the applicant has demonstrated sufficient legal interest in the subject site in order to make the planning application. However, the Board will note, that section 34(13) of the Planning and Development Act, 2000 (as amended) states a person is not entitled solely by reason of a permission to carry out any development. As such any further legal dispute is considered a Civil matter and are outside the scope of the planning appeal, which is a matter to be resolved by the respective parties.

8.3. Filling of Lagoon

8.3.1. Introduction

- 8.3.2. I noted from my site assessment that there was no evidence of the former lagoon on the appeal site, and the former lagoon is completely covered over, and now part of an agricultural field currently used for tillage farming. I would also note from the available documentation on the file there was no indication of any inflow or outflow from the former lagoon.

- 8.3.3. The appellant claims that the lagoon was filled with waste products including plastics, tyres, concrete, metals, drums and timbers and that illegal dumping was carried out without a waste licence.
- 8.3.4. I also noted from my site assessment that the site of the former lagoon is well integrated to the existing site in terms of its levels and landscaping and there is no evidence of any dumping or waste products near or on the site of the former lagoon. As stated in the application documentation the lagoon was backfilled with embankment soil and levelled with soil located on farm site.

8.3.5. Environmental Assessment

The first party includes, with the appeal response, an Environmental Assessment and Waste Classification Report (EAWC Report) in respect of the site of the former lagoon. The report was prepared by Enviroguide, on behalf of the applicant, in June 2024.

- 8.3.6. In respect of the environmental assessment I would note that the report includes an analysis of site investigation works and also soil laboratory analysis. A total of 5 no. trial pits were excavated to a maximum depth of 3.4m, and I would note that all exploratory locations were observed to be characteristic of natural or reworked soils with no evidence of waste deposition, with the exception of one trial hole, that is TP09. A total of 3 no. samples were selected for laboratory analysis.
- 8.3.7. I would note from the EAWC Report that soil samples were screened and reviewed with respect to the relevant Generic Assessment Criteria (GAC) for soil to assess risk to health. In summary the soil analytical results confirmed that soil samples are below relevant residential GACs and are not considered to present a risk to human health.
- 8.3.8. The EAWC Report, concluded, based on the soil samples that no significant or potentially significant exposure source / pathways are evident between the soils and current and future users. As absence of any contamination in soils would support the absence of any groundwater and surface water contamination via leaching.
- 8.3.9. The EAWC Report has adequately demonstrated by use of the conceptual site model that no significant or potentially significant exposure to source/pathway are

evident between soils and current and future site users and therefore an absence of contamination in soils supports an absence of source for groundwater surface water contamination via leaching. The source/pathway is therefore considered absent with no risk identified for the wider environment.

- 8.3.10. I would therefore consider, based on the information available, including relevant soil sampling, that the applicant has adequately demonstrated that the lagoon was filled appropriately and that no significant or potentially significant evidence of waste deposition was recorded.

In respect of the waste classification I would note that the EAWC Report undertook an assessment of the chemical nature of the soils to support compliant off-site disposal. In this regard the Report concludes that all samples have been classified as non-hazardous based on chemical analytical results and in accordance with EPA guidance *Soil Waste Classification and Categorisation Criteria*. The EAWC Report confirmed that materials classified for waste acceptance have been classified as non-hazardous and are suitable for disposal as inert waste.

- 8.3.11. The applicant's response submission includes correspondence from the Executive Scientist in the Environment & Climate Section of the PA (dated 26th July 2024) that confirms that the Environmental Assessment and Waste Classification Report has satisfactorily addressed concerns in relation to waste disposal. This correspondence was part of a separate process to the planning application.

8.3.12. Conclusion

In conclusion therefore, having regard to the information available including the trial hole excavations and the respective soil sampling, including testing in respect of Generic Assessment Criteria, and further having regard to the waste classification assessment and the chemical analysis of soil sampling, I am of the view that the applicant has adequately addressed concerns in relation waste disposal on the appeal site.

8.4. Other Matters

The Planner's report refers to a grey storage container placed on the subject site without the benefit of planning, and which does not form part of this planning

application. I noted on site inspection that the structure was removed. Accordingly, the PA condition 1 (b) is not relevant to the Board's considerations.

9.0 AA Screening

- 9.1. I have considered case ABP-320625-24 in light of the requirements S177U of the Planning and Development Act 2000 as amended.
 - 9.1.1. The development comprises of the retention for the permanent removal of the now demolished structures and filled lagoon.
 - 9.1.2. The closest European Sites, part of the Natura 2000 Network, are the Lower River Suir SAC (Site Code 002137) approximately 5.3 km to the southeast, and the River Barrow and River Nore SAC (Site Code 002162) approximately 13.7km to the northeast. I noted on site inspection that there were no land drains within the immediate vicinity of this site or an ecological pathway from the development site to the nearest European Site.
 - 9.1.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.
- 9.2. The reason for this conclusion is as follows:
 - The absence of any ecological pathway from the development site to the nearest European Site.
 - Location-distance from nearest European site.
- 9.3. I conclude, on the basis of objective information, that the development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 9.4. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

10.0 Recommendation

I recommend that planning permission for the development should be retained for the reasons and considerations set out below.

11.0 Reasons and Considerations

Having regard to the location of the development within an established agricultural landholding and the modest nature and scale of the proposal, it is considered that, subject to compliance with the conditions as set out below, the development would not be prejudicial to public health and would not be detrimental to the amenities of this rural area, and therefore would, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be retained 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. No surface water from within the site boundaries shall discharge onto the public road or adjoining properties.

Reason: In the interest of traffic safety and to prevent flooding or pollution.

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.

Kenneth Moloney
Senior Planning Inspector

26th May 2025

Form 1 - EIA Pre-Screening

Case Reference	ABP-320625-24
Development Summary	Retention permission for the permanent removal of the now demolished structures and filled lagoon.
Development Address	Ballyvadin, Fethard, Co. Tipperary.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. <input type="checkbox"/> No, no further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.	

No Screening required.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ **Date:** _____