



An
Coimisiún
Pleanála

Inspector's Report

ABP-321181-24

Development

Demolition of a farm building and the construction of a new farm building. A Natura Impact Statement was submitted with Further Information at application stage.

Location

Ballymackeogh, Newport, Co. Tipperary.

Planning Authority

Tipperary County Council.

Planning Authority Reg. Ref.

2414.

Applicant(s)

Micheal Ahern.

Type of Application

Permission.

Planning Authority Decision

Grant Permission.

Type of Appeal

Third Party

Appellant(s)

Peter Sweetman.

Observer(s)

None.

Date of Site Inspection

3rd April 2025.

Inspector

Kathy Tuck.

1.0 Site Location and Description

- 1.1. The subject site which has a stated area of c.0.05ha is situated within the townland of Ballymackeogh, Newport, Co. Tipperary. The appeal site is located c.3.6km to the east of Newport and c.13km to the east of Limerick City.
- 1.2. The site comprises of a number of farm building and Greenfields sites which are utilised for agricultural purposes. The western boundary of the site is formed with the Newport River.

2.0 Proposed Development

- 2.1. This application is seeking permission for the demolition of a farm building and the construction of a new farm building consisting of cattle pens, a calf house, a fodder and machinery shed and an underground slurry storage tank.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority, following a request for further information, granted planning permission on the 7th October 2024 subject to 5 no. conditions. The conditions included are considered to be general in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st planning report sets out the site location, details of the proposed development, relevant planning history, internal and prescribed reports received, details of observations received and relevant planning policy.

The report raises concerns over the lack of detail relating to the surface water drainage collection pipework and soiled water drainage collection pipework for the farmyard. In addition, the Planning Officer determines that the proposed development could not be screened out in terms of Appropriate Assessment and an NIS would therefore be

required. Therefore a request for further information was issued on the 11th March 2024.

The applicant submitted a response to the further information on the 16th August 20204 which can be summarised as follows:

1. A revised layout plan outlining drainage collection pipework.
2. An Natura Impact Statement.

The second report of the Planning Officer notes that the drainage collection pipework shows separate collection systems for clear and soiled waters. Clean waters drain to on site soakaways. Soiled waters drain to slatted tanks. The site plan shows no drainage from the site to the adjoining river.

It further notes that the NIS submitted outlines a range of mitigation measures to be employed through construction and pre and post construction to prevent impacts on the Lower River Shannon SAC and to control invasive species. It is considered that with the application of best practice construction and invasive species management measures outlined under Section 6.1 of the NIS that the development would not negatively impact on the conservation objectives of the SAC either individually or cumulatively.

Overall, the further information response received was considered to be acceptable and a recommendation to grant permission in line with the decision issued was made.

3.2.2. Other Technical Reports

None received.

3.3. Prescribed Bodies

Dept Housing Local Government and Heritage:

The submission notes that this site is adjacent to the Newport River which is part of the Lower River Shannon SAC (2165). Tipperary County Council must ensure they are satisfied there will be no water quality reduction in the Lower River Shannon SAC particularly during the construction phase.

3.4. Third Party Observations

The Planning Authority received 1 no. submission relating to the proposed development. Concerns raised can be summarised as follows:

- must assess the planning merits of Application in accordance with the Planning and Development Act 2000 (as amended) to ensure that the proposed development is in accordance with the proper planning and sustainable development of the area.
- Planning Authority must form and record a view as to the environmental impacts of the development.
- Planning Authority is the competent authority having responsibility under the habitat directive (reference is made to CJEU decision In Case C-323/17, People Over Wind and Peter Sweetman v Coillte Teoranta).
- This is a strict standard, and the Planning Authority does not have legal jurisdiction to give permission if it is not met.
- The development is within 1km of the Lower River Shannon SAC – Appropriate Assessment is required.

4.0 Planning History

PA Ref 07510391 Permission GRANTED for a silage slab and to extend existing slatted shed.

5.0 Policy Context

5.1. National Policy

5.1.1. National Planning Framework, First Revision April 2025

National Policy Objective 30 - Facilitate the development of the rural economy, in a manner consistent with the national climate objective, through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same

time noting the importance of maintaining and protecting biodiversity and the natural landscape and built heritage which are vital to rural tourism.

5.1.2. S.I. No. 113/2022 –European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 (GAP)

The Regulations provide the relevant standards for the collection and disposal of farmyard manure to give effect to Ireland's Nitrates Action Programme for the protection of waters against pollution caused by agricultural sources.

5.2. Local Policy

5.2.1. Tipperary County Development Plan 2022-2028

Relevant Objectives and Policies:

- Strategic Objective SO-6: To support a sustainable, diverse and resilient rural economy, whilst integrating the sustainable management of land and natural resources.
- Policy 8-4 Facilitate the development of alternative farm enterprises, whilst balancing the need for a proposed rural-based activity with the need to protect, promote and enhance the viability and environmental quality of the existing rural economy and agricultural land.
- Policy 10-3 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.
- Policy 11-1 In assessing proposals for new development to balance the need for new development with the protection and enhancement of the natural environment and human health. In line with the provisions of Article 6(3) and Article 6 (4) of the Habitats Directive, no plans, programmes, etc. or projects giving rise to significant cumulative, direct, indirect or secondary impacts on European sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any

other effects shall be permitted on the basis of this Plan (either individually or in combination with other plans, programmes, etc. or projects).

5.3. Natural Heritage Designations

The appeal site is not located within to any designated Natura 2000 sites or Natural Heritage Areas. The site shares its western boundary with the Lower River Shannon SAC (site Code 002165).

6.0 EIA Screening

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

7.0 The Appeal

7.1. Grounds of Appeal

This is a 3rd Party Appeal against the decision of Tipperary County Council to grant permission. The grounds can be summarised as follows:

- Planning Authority failed to carry out an Appropriate Assessment according to the requirements of EU and Irish Case Law – listing what is in the NIS is not an appropriate assessment.
- Request a 'de novo' Appropriate Assessment of whole development.
- Mitigation proposed are considered to be general – cannot apply with determinations of CJEU.
- NIS submitted prepared following Appropriate Assessment of Plans and Projects in Ireland guidance for Planning Authorities, 2010a – these guidelines have been overturned by the courts of Justice of the European Union (case 258/11).

- NIS concludes that with the implementation of best practice and the recommended mitigation measures there will be no potential for direct, indirect or cumulative impacts arising from the proposed farm buildings either alone or in-combination with any other plans or projects- the integrity of the Lower River Shannon SAC.
- The NIS failed to assess how slurry is to be disposed of – failed to include for detailed mitigation designed and relied on the ‘mystical best practice.’
- The threshold appropriate assessment must pass in this context is explained within paragraph 44 of CJEU case 258/11:

So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it 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.

7.2. Applicant Response

A response to the 3rd Party Appeal was received from the applicant on the 27th November 2024. The response can be summarised as follows:

- There is no connecting pathway from the surface water run-off between the proposed development site and the Newport River – which forms part of the Lower River Shannon SAC (as stated in Section 5 of the NIS).
- There is no potential for run-off from the construction site into the Newport River.
- Potential impacts of the proposed development primarily relate to the potential spread of invasive species within the Lower River Shannon SAC during the construction phase (as stated in Section 6 of the NIS).
- Table 6.1 of the NIS states that there is no surface water connectivity between the proposed development and Newport River – Nonetheless the following guidelines will be adhered to during construction as best practice measures are not relied upon for the NIS but are provided to be clear that construction will accord with such.

- Detailed and site specific mitigation measures for the prevention of invasive species are provided in Table 6.1.
- Appellant incorrectly states that NIS fails to assess the disposal of slurry – potential operational impacts assessed in Section 5.2.2 (incl. the storage and spreading of slurry) - no connecting pathway from the surface water run-off between the proposed development site and the Newport River therefore no impact as a result of slurry run-off into the Lower River Shannon SAC.
- DEHLG guidelines Appropriate Assessment of Plans and Projects in Ireland guidance for Planning Authorities, 2024 have not been updated or replaced and as such recommended reference for guidance on AA.
- NIS provides a detailed assessment of potential impacts of both construction and operational phases – Section 5.
- Detailed specific mitigation measures – section 6.
- NIS does not contain lacunae nor rely on anything mystical as claimed by the appellant.

7.3. Planning Authority Response

None received.

7.4. Observations

None received.

8.0 Assessment

Having examined the application details and all other documentation on file, including the appeal and observation and having inspected the site, I consider that the main issues for consideration is the Appropriate Assessment process and determination.

8.1. Appropriate Assessment

8.1.1. The 3rd Party Appellant has raised concerns over the quality of the Appropriate Assessment which was furnished to the Planning Authority in response to a request

for Further Information. It is contended that the Planning Authority failed to carry out an Appropriate Assessment according to the requirements of EU and Irish Case Law. The appellant has requested that the Commission undertake a de novo assessment of the Natura Impact Assessment submitted.

- 8.1.2. The 3rd Party Appellant argues that mitigation set out within the Appropriate Assessment are general in nature and that it was prepared following the Appropriate Assessment of Plans and Projects in Ireland guidance for Planning Authorities, 2010a which have since been revoked.
- 8.1.3. The applicant in their response states that the Appropriate Assessment has been prepared in line with the requirements of 'Appropriate Assessment of Plans and Projects in Ireland guidance for Planning Authorities, 2024' which has not been updated or replaced and as such is the recommended reference for guidance on AA. It is further stated that the NIS provides a detailed assessment of potential impacts of both construction and operational phases as set out within Section 5 of the NIS submitted, while detailed specific mitigation measures are set out in Section 6 of same.
- 8.1.4. The Planning Authority, within their role as being the competent authority, undertook a screening determination of the proposed development in terms of Appropriate Assessment. This screening process was set out clearly within Appendix 1 of the first report of the Planning Officer dated the 11th March 2024. It was considered that potential impacts exist through escapement of soiled waters, sediments, pollutants from the proposed development into the adjoining Newport River which forms part of the Lower River Shannon SAC during construction phase and that operational impacts could also arise from escapement of slurry or soiled waters from the development to the Newport River. The screening assessment also considered the likely changes to the European Site and considers that mitigation measures would be necessary in order to rule out likely significant effects upon the Lower River Shannon SAC.
- 8.1.5. In screening the need for Appropriate Assessment, it was determined that the proposed development could result in significant effects on Lower River Shannon SAC in view of the conservation objectives of those sites and that Appropriate Assessment under the provisions of S177U/ 177AE was required. As such, it was concluded that a Stage 2 Appropriate Assessment would be required. Having regard to Appendix 2 of

my report below I would concur with the screening determination of the Planning Authority.

- 8.1.6. The Planning Officer in their second report undertook an assessment of the Natura Impact Assessment submitted. The report stated that there is no water courses or active drainage ditches present on the site that provide a pathway between same and the Newport River. The river is buffered from the proposed development by an existing earth bank, which would act as a bund preventing surface water run off reaching the Lower River Shannon SAC.
- 8.1.7. While I consider that the Planning Officer did undertake a robust assessment of the NIS, I am of the opinion that the NIS submitted is lacking in detail with regard to the mitigation measures set out which are not considered to be site specific but more generic in nature. Therefore, I do accept the concerns raised by the 3rd party appellant in this instance.
- 8.1.8. I note that while the western boundary of the site which is shared with the Newport River is heavily planted with mature hedging and that the bank of the river acts almost like a bund given the way the land rises from the river, however there is a section of the river located c.30m to the south west of the subject site where all planting is removed and there is access to the river where it appears animals have entered the river to cross it. This causes concern and could act as a surface water connection from the farmyard in terms of surface water runoff. Therefore, given the lack of specific detailed mitigation measures included within the NIS submitted relating to the operation and construction phase of the development and details as how it is proposed to implement the best practice documents listed, I cannot fully determine if the development would give rise to an adverse impact upon the site integrity of the Lower River Shannon SAC.
- 8.1.9. In conclusion, following an examination, analysis and evaluation of the NIS all associated material submitted and taking into account observations of the Department of Housing, Local Government and Heritage, I consider that adverse effects on site integrity of the Lower Shannon SAC cannot be excluded in view of the conservation objectives of this site and intaking the precautionary principles into account, I am of the opinion that reasonable scientific doubt remains as to the absence of such effects. I therefore recommend that permission be refused.

9.0 Water Framework Directive

- 9.1.1. The subject site is situated within the Killeengarrif_010 sub basin and the Slieve Phelim (IE_SH_G_213) groundwater body. The Killeengarrif_010 sub basin has a good status and is considered not to be at risk.
- 9.1.2. The Newport River, which forms part of the Lower River Shannon SAC, is a 4th order river and forms a tributary from the Mulkear River. The status of the Newport River under the water framework directive is noted as being 'good'.
- 9.1.3. The proposed development is seeking permission to demolish existing structures on site and to construct a larger farm building consisting of cattle pens, a calf house, a fodder and machinery shed and an underground slurry storage tank. As such the applicant is seeking to increase the scale of the current level of farm operations on site. However, given the lack of information which has accompanied the planning application in terms of a nutrient management plan which would provide details of the quantum of slurry to be managed on site and the stock numbers, it is unclear as to the impact the proposal may have upon the water quality of the Newport River.
- 9.1.4. While the applicant has stated within the Natura Impact Assessment Submitted that it is their intention to ensure that slurry will be spread in accordance with SI No.62/2023 – EU (Good Agricultural practice for the protection of waters) (Amendment) Regulations 2023, no Nutrient Management Plan or Farm Plan has been submitted as part of the application documentation. This document would provide for details of stock numbers and would usually accompany applications of permission for farmyard developments.
- 9.1.5. Therefore, in the absence of such documentation I cannot determine whether or not the development as proposed would have a detrimental impact on the water quality of the Newport River.
- 9.1.6. However, it would be open to the Commission to seek a Nutrient Management Plan which would provide the details required to undertake a robust assessment of the proposal in terms of the impact it may have upon the water quality of the Newport River.

10.0 Recommendation

I recommend that the decision of Tipperary County Council be overturned, and permission refused for the reasons and considerations set out below.

11.0 Reasons and Considerations

1. Having regard to the information provided in the Planning Application and on the basis of the precautionary principle, the Commission consider that there is reasonable scientific doubt regarding the robustness of the findings of the Appropriate Assessment (NIS) report with particular reference to the mitigation measures set out. The Commission is not satisfied that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of European Site Lower River Shannon SAC in view of the sites conservation objections.

The development as proposed would be at variance with Policy 11-1 of the Tipperary County Development Plan 2022-2028 which seeks to ensure the no plans, programmes, etc. or projects giving rise to significant cumulative, direct, indirect or secondary impacts on European sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall be permitted on the basis of this Plan (either individually or in combination with other plans, programmes, etc. or projects). Therefore, to permit the proposed development would not accord with the proper planning or sustainable development of the area.

2. Having regard to the proximity of the site to the Newport River and the absence of information provided relating to the Nutrient Management Plan for farm operations, it is unclear as to whether or not the proposed development would have a detrimental impact on the water quality of the Newport River. In the absence of such information, it is not possible to assess whether or not the development would result in significant water pollution which would undermine the objectives of the Water Framework Directive.

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.

Kathy Tuck
Planning Inspector

25th September 2024

Appendix 1

EIA Pre-Screening

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| Case Reference | ABP-321181-24 |
| Proposed Development Summary | Demolition of a farm building and the construction of a new farm building |
| Development Address | Ballymackeogh, Newport, 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 type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. <input checked="" 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. | State the Class here |
| 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 | |

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| <p>type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p> | |
| <p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p> | |
| <p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p> | |

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| <p>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)?</p> | |
| <p>Yes <input type="checkbox"/></p> | <p>Screening Determination required (Complete Form 3)</p> |
| <p>No <input checked="" type="checkbox"/></p> | <p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p> |

Inspector: _____ Date: _____

Appendix 2

AA Screening

| Screening for Appropriate Assessment Test for likely significant effects | |
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| Step 1: Description of the project and local site characteristics | |
| Brief description of project | Permission is being sought for the demolition of a farm building and the construction of a new farm building consisting of cattle pens, a calf house, a fodder and machinery shed and an underground slurry storage tank |
| Brief description of development site characteristics and potential impact mechanisms | The subject site shares its western boundary with the Newport River which forms part of the Lower River SAC. The site area is given at 0.5ha. The area of the existing buildings on site is given as c.791sq.m, the area to be demolished is given as c.245sq.m while the area of the proposed building is given as 581sq.m. |
| Screening report | Yes undertaken by the Planning Authority. |
| Natura Impact Statement | Yes |
| Relevant submissions | <p>Dept Housing Local Government and Heritage:</p> <p>The submission notes that this site is adjacent to the Newport River which is part of the Lower River Shannon SAC (2165). Tipperary County Council must ensure they are satisfied there will be no water quality reduction in the Lower River Shannon SAC particularly during the construction phase.</p> <p>3rd Party Appellant:</p> <p>The NIS failed to assess how slurry is to be disposed of – failed to include for detailed mitigation designed and relied on the ‘mystical best practice’.</p> |

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| | Mitigation proposed are considered to be general. |
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Step 2. Identification of relevant European sites using the Source-pathway-receptor model

| European Site (code) | Qualifying interests ¹ Link to conservation objectives (NPWS, date) | Distance from proposed development (km) | Ecological connections ² | Consider further in screening ³ Y/N |
|----------------------------------|---|---|-------------------------------------|--|
| Lower River Shannon SAC (002165) | <p>Sandbanks which are slightly covered by sea water all the time [1110]</p> <p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Water courses of plain to montane levels with</p> | Bounding the site to the west. | | |

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| | <p>the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260]</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Tursiops truncatus</i> (Common Bottlenose Dolphin) [1349]</p> <p><i>Lutra lutra</i> (Otter) [1355]</p> | | | |
| Clare Glen SAC (000930) | <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0]</p> <p><i>Vandenboschia speciosa</i> (Killarney Fern) [6985]</p> | 4.26km | None | N |

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|---|--|--------|------|---|
| Slievefelim to Silvermines Mountains SPA (004165) | Hen Harrier (Circus cyaneus) [A082] | 4.26km | None | N |
| Glenomra Wood SAC (001013) | Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] | 10.2km | None | N |

¹ Summary description / **cross reference to NPWS website** is acceptable at this stage in the report

² Based on source-pathway-receptor: Direct/ indirect/ tentative/ none, via surface water/ ground water/ air/ use of habitats by mobile species

³if no connections: N

Step 3. Describe the likely effects of the project (if any, alone or in combination) on European Sites

[From the AA Screening Report or the Inspector's own assessment if no Screening Report submitted, complete the following table where European sites need further consideration taking the following into account:

- (a) Identify potential direct or indirect impacts (if any) arising from the project alone that could have an effect on the European Site(s) taking into account the size and scale of the proposed development and all relevant stages of the project (See Appendix 9 in Advice note 1A).
- (b) Are there any design or standard practice measures proposed that would reduce the risk of impacts to surface water, wastewater etc. that would be implemented regardless of proximity to a European Site?
- (c) Identify possible significant effects on the European sites in view of the conservation objectives (alone or in combination with other plans and projects)

AA Screening matrix

| Site name Qualifying interests | Possibility of significant effects (alone) in view of the conservation objectives of the site* | |
|--|--|--|
| | Impacts | Effects |
| Site 1: Name (code) Lower River Shannon SAC (002165) QI list Sandbanks which are slightly covered by sea | Potential impacts exist through escapement of soiled waters, sediments, pollutants into the adjoining Newport River which forms part of the Lower River Shannon SAC during construction. | Considering potential effects on water quality and food availability within the zone of influence of the proposed development effects could include: |

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| <p>water all the time [1110]</p> <p>Estuaries [1130]</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Coastal lagoons [1150]</p> <p>Large shallow inlets and bays [1160]</p> <p>Reefs [1170]</p> <p>Perennial vegetation of stony banks [1220]</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260]</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion)</p> | <p>Operational impacts could arise from escapement of slurry or soiled waters from the development to the Newport River.</p> | <ul style="list-style-type: none"> • Disturbance to QI species (otter and fish species) • Changes in key indicators of conservation status value i.e. water quality • Interference with the key relationships that define the structure or ecological function of the site such as reduction in water quality with associated impacts on dependent habitats/species. <p>Uncertain in the absence of construction management and an Ecological Impact Assessment (EIA).</p> |
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| incanae, <i>Saliccion albae</i>) [91E0] <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] <i>Petromyzon marinus</i> (Sea Lamprey) [1095] <i>Lampetra planeri</i> (Brook Lamprey) [1096] <i>Lampetra fluviatilis</i> (River Lamprey) [1099] <i>Salmo salar</i> (Salmon) [1106] <i>Tursiops truncatus</i> (Common Bottlenose Dolphin) [1349] <i>Lutra lutra</i> (Otter) [1355] | | |
| Y | Likelihood of significant effects from proposed development (alone): Y | |
| N/A | Possibility of significant effects (alone) in view of the conservation objectives of the site* | |
| | Impacts | Effects |
| Step 4 Conclude if the proposed development could result in likely significant effects on a European site | | |
| <p>Based on the information provided in the screening report, site visit, review of the conservation objectives and supporting documents, I consider that in the absence of mitigation measures beyond best practice construction methods, the proposed development has the potential to result in significant effects on the Lower River Shannon SAC(002165).</p> <p>I concur with the Planning Authorities findings that such impacts could be significant in terms of the stated conservation objectives of the SACs and SPAs when considered on their own and in combination with other projects and plans in relation to pollution related pressures and disturbance on qualifying interest habitats and species. I recommend that proceed to AA.</p> | | |

Appendix 3

Appropriate Assessment

The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, sections 177V [or S 177AE] of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Taking account of the preceding screening determination, the following is an appropriate assessment of the implications of the proposed development of the demolition of a farm building and the construction of a new farm building consisting of cattle pens, a calf house, a fodder and machinery shed and an underground slurry storage tank in view of the relevant conservation objectives of Lower River Shannon SAC (site Code 002165) based on scientific information provided by the applicant.

The information relied upon includes the following:

- Natura Impact Statement prepared by Greenleaf Ecology.
- The National Parks and Wildlife Services web site.
- The AA determination undertaken by the Planning Authority.

I am satisfied that the information provided is adequate to allow for Appropriate Assessment. I am satisfied that all aspects of the project which could result in significant effects are considered and assessed in the NIS and mitigation measures designed to avoid or reduce any adverse effects on site integrity are included and assessed for effectiveness.

Submissions/observations

Dept Housing Local Government and Heritage:

The submission notes that this site is adjacent to the Newport River which is part of the Lower River Shannon SAC (2165). Tipperary County Council must ensure they are satisfied there will be no water quality reduction in the Lower River Shannon SAC particularly during the construction phase.

3rd Party Appellant:

The NIS failed to assess how slurry is to be disposed of – failed to include for detailed mitigation designed and relied on the ‘mystical best practice’.

Mitigation proposed are considered to be general.

3rd Party Appeal received by the Commission has raised

NAME OF SAC/ SPA (SITE CODE): Lower River Shannon SAC (site Code 002165)

Summary of Key issues that could give rise to adverse effects (from screening stage):

- (i) Water quality degradation (construction and operation)
- (ii) Disturbance of mobile species
- (iii) Spread of invasive species

See Table 5.1 of the NIS

| Qualifying Interest features likely to be affected. | Conservation Objectives Targets and attributes | Potential adverse effects | Mitigation measures (summary) NIS SECTION 6.1 |
|---|---|---|--|
| Sandbanks which are slightly covered by sea water all the time [1110] | To maintain the favourable conservation condition of Sandbanks which are slightly covered by sea water all the time in the Lower River Shannon SAC. | This habitat located C.89k to the west of the appeal site and as such no adverse impact is considered. No in stream works are proposed as part of this application. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Estuaries [1130] | To maintain the favourable conservation condition of Estuaries in the Lower River Shannon SAC | This habitat is situated C.22.5km downstream of the site and as such no adverse impact is considered. No in stream works are proposed as part of this application. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Mudflats and sandflats not covered by seawater at low tide [1140] | To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide in the Lower River Shannon SAC. | This habitat is situated C.26km downstream of the site and as such no adverse impact is considered. No in stream works are | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |

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| | | propose as part of this application. | |
| Coastal lagoons [1150] | To restore the favourable conservation condition of Coastal lagoons in the Lower River Shannon SAC, | This habitat is situated C.33km downstream of the site and as such no adverse impact is considered. No in stream works are propose as part of this application. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Large shallow inlets and bays [1160] | To maintain the favourable conservation condition of Large shallow inlets and bays in the Lower River Shannon SAC | This habitat is situated C.72km west of the site and as such no adverse impact is considered. No in stream works are propose as part of this application. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Reefs [1170] | To maintain the favourable conservation condition of Reefs in the Lower River Shannon SAC | This habitat is situated C.44km west of the site and as such no adverse impact is considered. No in stream works are propose as part of this application. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Perennial vegetation of stony banks [1220] | To maintain the favourable conservation condition of Perennial vegetation of stony banks in the Lower River Shannon SAC. | This habitat is situated C.71km west of the site and as such no adverse impact is considered. No in stream works are propose as part of this application. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] | To maintain the favourable conservation condition of Vegetated sea cliffs in the Lower River Shannon SAC. | This habitat is situated C.84km west of the site and as such no adverse impact is | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply |

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| | | considered. No in stream works are propose as part of this application. | recommendations set out within such. |
| Salicornia and other annuals colonising mud and sand [1310] | To maintain the favourable conservation condition of Salicornia and other annuals colonizing mud and sand in the Lower River Shannon SAC, | This habitat is situated C.77km west of the site and as such no adverse impact is considered. No in stream works are propose as part of this application. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330] | To restore the favourable conservation condition of Atlantic salt meadows (Glauco-Puccinellietalia maritimae) in the Lower River Shannon SAC | This habitat is situated C.23km west of the site and as such no adverse impact is considered. No in stream works are propose as part of this application. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Mediterranean salt meadows (Juncetalia maritimi) [1410] | To restore the favourable conservation condition of Mediterranean salt meadows (Juncetalia maritimi) in the Lower River Shannon SAC, | This habitat is situated C.40km west of the site and as such no adverse impact is considered. No in stream works are propose as part of this application. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation [3260] | To maintain the favourable conservation condition of Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation in the Lower River Shannon | It is stated within the NIS that in consideration of the lack of surface water connectivity between the appeal site and the Newport River, the provision of soakpits, soiled water and slurry storage tanks, the | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |

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| | | <p>proposed development is not likely to result in a significant affect on water quality.</p> <p>I consider that given the absence of a Nutrient Management Plan and details that would have been included in such relating to the disposal or treatment off slurry or how it is proposed to treat an accidental overflow of the storage tanks, I cannot conclude that the proposal will not give rise to water derogation issues.</p> <p>Furthermore, regard must be given surface water treatment and how it is proposed to treat such.</p> | |
| <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</p> | <p>To maintain the favourable conservation condition of Molinia meadows on calcareous, peaty or clayey-silt laden soils (Molinion caeruleae) in the Lower River Shannon SAC,</p> | <p>The NIS notes that this habitat is not mapped and that the habitats at the appeal site predominantly comprise of built land. I accept this and considering no in stream works are being proposed consider the</p> | <p>No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such.</p> |

| | | proposal will not impact this habitat. | |
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| Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0] | To restore the favourable conservation condition of Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) in the Lower River Shannon SAC | This habitat is situated C.8 km west of the site and as such no adverse impact is considered. No in stream works are proposed as part of this application | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] | To restore the favourable conservation condition of Freshwater Pearl Mussel in the Lower River Shannon SAC. | I note that according to the NPWS the Cloon population is confined to the main channel and is distributed from Croany Bridge to approx. 1.5km upstream of Clonderalaw Bridge. This area is situated approx. 80k to the west of the subject site. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| <i>Petromyzon marinus</i> (Sea Lamprey) [1095] | To restore the favourable conservation condition of Sea Lamprey in the Lower River Shannon SAC | The NIS considers that the proposed works will not affect the accessibility of watercourse for Sea Lamprey. I note the upper extent of the SAC in the R. Fergus is delineated by a barrier to migration. Barriers are also present in the Mulkear and Feale. Again, no instream | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |

| | | works are proposed. | |
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| Lampetra planeri (Brook Lamprey) [1096] | To maintain the favourable conservation condition of Brook Lamprey in the Lower River Shannon. | <p>that the proposed works will not affect the accessibility of watercourse for this specie. Again, no instream works are proposed.</p> <p>However, I consider there could be some impact given that this specie has been found in all water courses down to first order streams within the SAC I would have concern. I note that the NIS consistently states that there are no surface water connections to the Newport River, I note that there is an access from the site to the river where vegetation has been removed. Therefor I consider specific mitigation would be required.</p> | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Lampetra fluviatilis (River Lamprey) [1099] | To maintain the favourable conservation condition of River Lamprey in the Lower River Shannon SAC. | The NIS notes that there will be no impact on this specie. However similar with that of the Brook Lamprey I note that this specie has access to all water courses down to first order streams. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |

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| | | Therefor I consider specific mitigation would be required to avoid any potential impact from surface water run off. | |
| Salmo Salar (Salmon) [1106] | To restore the favourable conservation condition of Salmon in the Lower River Shannon SAC | The NIS notes that there will be no impact on this specie. This specie is found in 100% of river channels and as such I would expect that in absence of specific mitigation their may be some impact. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Tursiops truncatus (Common Bottlenose Dolphin) [1349] | To maintain the favourable conservation condition of Bottlenose Dolphin in the Lower River Shannon SAC | Noting the location of this specie as per map 16 of the Conservation objectives for this SAC they are to be found approximately 60km to the west of the subject site and as such I do not consider the proposal will impact such. | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |
| Lutra lutra (Otter) [1355] | To restore the favourable conservation condition of Otter in the Lower River Shannon SAC | The NIS acknowledges that the otter species forage and commute along the Newport Rive and that the potential for temporary visual and noise disturbance within the Newport river in | No specific mitigation has been set out. Reference is made to a number of best management practice documents but there is no indication of how the applicant proposing to apply recommendations set out within such. |

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| | | <p>the vicinity of the site during the construction phase cannot be discounted. It is further asserted that given Otters are nocturnal the main site activity will be outside of the expected hours of otters passing the site.</p> <p>It is further stated that given the lack of surface water connection to the Newport River from the subject site together with the provision of soakpits, soiled water tanks and a slurry storage tank the proposal will not result in a significant effect on water quality.</p> <p>I note that there may be a surface water connection from the subject to the Newport River located c.30m to the south west of the subject site. There is a section where all vegetation has been removed and a slip way into the river occurs. There</p> | |
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| | <p>is no specific mitigation provided for how run off/surface water from the farm yard will be captured to stop it entering the river.</p> <p>.</p> <p>Furthermore, in the absence of any habitat surveys (EcIA) it is not possible to draw any conclusions in the impact the proposal may have on Otter Species.</p> <p>With regard to water quality impact again in the absence of a Nutrient Management Plan or Farm Operation Plan it is not possible for me to agree with the conclusion drawn in the NIS.</p> <p>Therefore, I consider specific mitigation would be required.</p> | |
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The above table is based on the documentation and information provided on the file and I am satisfied that the submitted NIS has identified the relevant attributes and targets of the Qualifying Interests. However, I note that the findings indicate no impact to a number of aquatic species

which would be common within the Newport River where it joins the subject site and in the absence of specific mitigation aimed to protect these species I would be of the opinion that some impact may occur.

Assessment of issues that could give rise to adverse effects view of conservation objectives

(i) Water quality degradation

The subject site shares its western boundary with the Newport River which forms part of the Lower River Shannon SAC. The proposal is seeking permission to demolish and rebuild part of the shed structures on site which would essentially increasing the scale of the farm operations. While I note that the status of the Newport River good, I further note that in the absence of project specific mitigation and in the absence of a Nutrient Management Plan, I cannot determine whether or not the proposal would lead to the degradation of the water quality of the Newport River.

(ii) Disturbance of mobile species

I have noted concern over the possible impact the proposal may have upon a number of mobile species which form part of the qualifying interests associated with the Lower River Shannon SAC. I consider that in the lack of more detailed and site-specific mitigation measures I cannot conclude that the proposed development would not adversely affect the SAC. Given the proximity of the site to the Newport River and the possibility of a surface water connection from the subject to the Newport River located c.30m to the south west of the subject site.

(iii) Spread of invasive species

Invasive species can rapidly take over and negatively alter the natural balances of an ecosystem. Japanese Knotweed and Giant Hogweed were found to be on site.

Mitigation measures and conditions

A number of mitigation measures have been set out under Section 6.1 which include for:

Control by herbicide in compliance with labelling and Biosecurity mitigation to include cleaning all machines before entering the site and taking appropriate measures during the operational phase

In-combination effects

I am satisfied that in-combination effects has been assessed adequately in the NIS (Section 5.4). The applicant has demonstrated satisfactorily that no significant residual effects will remain post

the application of mitigation measures and there is therefore no potential for in-combination effects.

Findings and conclusions

The applicant determined that following the implementation of mitigation measures the construction and operation of the proposed development alone, **or in combination with other plans and projects**, will not adversely affect the integrity of this European site.

Based on the information provided, I am not satisfied that adverse effects arising from aspects of the proposed development can be excluded for the European sites considered in the appropriate Assessment. I consider that the mitigation measures set out within section 6.1 of the NIS are not adequate enough or site specific to rely upon to ensure that the proposed development would not adversely affect the integrity of the Lower River Shannon SAC.

Reasonable scientific doubt

I am not satisfied that no reasonable scientific doubt remains as to the absence of adverse effects.

Site Integrity

I do not consider that the NIS submitted has provided adequate level of mitigation to ensure that the proposed development will not affect the attainment of the Conservation objectives of the Lower River Shannon SAC. Adverse effects on site integrity can therefore not be excluded, and therefore reasonable scientific doubt remains as to such effects.

Appendix 4

Water Framework Directive

| WFD IMPACT ASSESSMENT STAGE 1: SCREENING | | | |
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| Step 1: Nature of the Project, the Site and Locality | | | |
| An Bord Pleanála ref. no. | ABP-321181-24 | Townland, address: | Ballymackeogh, Newport, Co. Tipperary. |
| Description of project | | Demolition of a farm building and the construction of a new farm building | |
| Brief site description, relevant to WFD Screening, | | Site is located within an area of little elevation with freely draining earths, located in a rural location. The subsoil on the site is identified as Alluvium. Alluvium is post glacial sand and gravel deposits. | |
| Proposed surface water details | | During the operational phase stormwater will be collected in drains and directed to 4 soakpits within the site. | |
| Proposed water supply source & available capacity | | Water supply is indicated as being from the mains. It is noted that the subject site is already in operation as a farm with a water supply connection to the mains. | |

| Proposed wastewater treatment system & available capacity, other issues | The development will be served by the existing on site waste treatment plant. | | | | | |
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| Others? | N/A | | | | | |
| Step 2: Identification of relevant water bodies and Step 3: S-P-R connection | | | | | | |
| Identified water body | Distance to (m) | Water body name(s) (code) | WFD Status | Risk of not achieving WFD Objective e.g. at risk, review, not at risk | Identified pressures on that water body | Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater) |
| River Waterbody | On western boundary. | Newport River IE_SH_25K020150 | Good | Monitoring | Agricultural activities | Unclear – lack of information provided. |

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| Groundwater waterbody | Underlying site | Slieve Phelim (IE_SH_G_213) | Good | Good | Agricultural activities | Unclear. |
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Step 3: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.

CONSTRUCTION PHASE

| No. | Component | Water body receptor (EPA Code) | Pathway (existing and new) | Potential for impact/ what is the possible impact | Screening Stage Mitigation Measure* | Residual Risk (yes/no) Detail | Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2. |
|-----|-------------------------------|----------------------------------|--|--|---|----------------------------------|---|
| 1. | Site clearance & Construction | Newport River IE_SH_25K020150 | It is unclear - appears to be possibility of a surface water connection from the subject to the Newport River located c.30m to the south west of the subject site. | Yes – unclear of quantum of slurry being produced and managed on site. | Details of mitigation set out in NIS are very high level and not site specific. | Unclear. | Cannot not determine if application can be screened out. |
| 2. | Site clearance & Construction | Slieve Phelim (IE_SH_G_213) | Unclear. | Yes – unclear of quantum of slurry being produced | Details of mitigation set out in NIS are very | Unclear. | Cannot not determine if application can be screened out. |

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| | | | | and managed on site. | high level and not site specific | | |
| OPERATIONAL PHASE | | | | | | | |
| 3. | Surface | Owennaforeesha River IE_SH_260040100 | It is unclear - appears to be possibility of a surface water connection from the subject to the Newport River located c.30m to the south west of the subject site. | Yes – unclear of quantum of slurry being produced and managed on site. | Details of mitigation set out in NIS are very high level and not site specific | Unclear. | Cannot not determine if application can be screened out. |
| 4. | Ground | Carrick on Shannon IE_SH_G_048 | Unclear. | Yes – unclear of quantum of slurry being produced and managed on site. | Details of mitigation set out in NIS are very high level and not site specific | Unclear. | Cannot not determine if application can be screened out. |
| DECOMMISSIONING PHASE | | | | | | | |
| 5. | NA | NA | NA | NA | NA | NA | NA |