



An
Bord
Pleanála

Inspector's Report

ABP-321484-24

Development	A loose / slatted shed, manure pit, concrete aprons and associated site works necessary to facilitate the proposed development.
Location	Coolmeen, Ballyhale, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	2460237
Applicant(s)	Michael, Keith & Conor Phelan
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party v. Decision
Appellant(s)	Michael & Marina McMahon
Observer(s)	None.
Date of Site Inspection	14 th February, 2025
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located in the rural townland of Coolmeen, Co. Kilkenny, approximately 2.4km south of the village of Ballyhale and 2.3km east of the M9 Motorway, in an area which is typically rural in character and dominated by a rolling patchwork of agricultural fields interspersed with intermittent instances / groupings of one-off rural housing, farmyards and associated outbuildings.
- 1.2. The site itself has a stated site area of 0.406 hectares, is irregularly shaped, and presently encompasses an active farmyard (which includes existing cattle housing, slatted sheds and wrapped silage storage) in addition to part of a lower-lying field set in pasture. It occupies a recessed position set back from the public road and is bounded by agricultural fields with screening to the north provided by a combination of intervening structures, vegetation and local topography. Access is obtained via a shared laneway that extends southwards from the public road to serve nearby housing and surrounding lands.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a loose / slatted shed (with a stated floor area of 407.81m²), an underground slatted tank, manure pit, concrete aprons and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Following the receipt of a response to a request for additional information, on 20th November, 2024 the Planning Authority issued a notification of a decision to grant permission, subject to 8 No. conditions which can be summarised as follows:

Condition No. 1 - Refers to the submitted plans and particulars.

Condition No. 2 – Refers to the onsite disposal of clean surface water.

Condition No. 3 – Requires the construction and operation of the development to be undertaken in such a manner as to avoid any significant

impairment or interference with amenities or the environment beyond the immediate works area / site.

Condition No. 4 – Requires the development to be undertaken in accordance with the requirements of the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2022 and / or any relevant regulations enacted subsequent to the 2022 Regulations but prior to the commencement of the proposed development.

Condition No. 5 – Refers to waste management considerations.

Condition No. 6 – Requires all farmyard manure produced on site to be stored in accordance with the requirements of S.I. 13 of 2022, the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2022 and / or any relevant regulations enacted or amended subsequent to the 2022 regulations.

Condition No. 7 – Refers to external finishes.

Condition No. 8 - Refers to landscaping.

3.2. Planning Authority Reports

3.2.1. Planning Reports

An initial report details the site context, planning history and the relevant policy considerations along with the contents of the various submissions and reports received with respect to the proposed development. It proceeds to state that the siting and design of proposed development alongside an existing agricultural shed is acceptable and will not negatively impact on the visual amenities of the area before concluding that the proposal will facilitate the expansion of an existing farmholding and is an appropriate form of development. It subsequently recommends that further information be sought in relation to a number of issues, including the segregation and management of clean & soiled waters, the adequacy of the storage capacity for slurry and farmyard manure, the access arrangements for construction traffic, landscaping works, and the provision of such information as to enable the Planning

Authority to undertake screening of the proposed development for the purposes of Appropriate Assessment.

Following the receipt of a response to the request for further information, a final report was prepared which recommended a grant of permission, subject to conditions.

3.2.2. Other Technical Reports

Environment Section: No objection, subject to conditions.

Road Design: No objection from a road design perspective.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3.4.1. A total of 2 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The need to ensure that the proposal accords with the proper planning and sustainable development of the area.
- The requirement to form and record a view as to the environmental impacts of the proposed development having regard to any need for environmental impact assessment etc.
- The need for appropriate assessment pursuant to the EU Habitats Directive.
- Compliance with the requirements of the Water Framework Directive.
- The inadequacy of the existing laneway to accommodate the scale / intensification of development proposed without detriment to the residential amenity and value of neighbouring property.
- The existing laneway is narrow, poorly surfaced, and was not designed to accommodate modern farm machinery, the scale of development proposed, or the likely construction traffic.

- The character and nature of the existing laneway is being eroded from that of a rural lane to a private farmyard access without regard to its integrity or use by other parties.
- Alternative means of access should be considered to serve any expansion of the farming enterprise.
- The invalidity of the planning application due to deficiencies / discrepancies in respect of the public notices.
- The 'Agricultural Report' referenced in the schedule of documentation is absent from the submitted plans and particulars with the result that the type and number of livestock to be housed is unclear.
- There are inaccuracies / discrepancies on the site location maps as regards the extent of the applicants' landholding.
- The proposed access to the development site is not clearly shown on the site layout plan or site location maps.
- No details have been provided of any landscaping / screening proposals.

4.0 Planning History

4.1. On Site:

- 4.1.1. PA Ref. No. 19/352. Was granted on 11th December, 2019 permitting Michael and Keith Phelan permission for a cattle shed over a slatted tank with straw lie back, concrete apron and associated site works at Coolmeen, Ballyhale, Co. Kilkenny.
- 4.1.2. PA Ref. No. 09103. Was granted on 18th May, 2009 permitting Michael Phelan permission to construct a slatted tank with ancillary farm buildings at Coolmeen, Ballyhale, Co. Kilkenny.

4.2. On Adjacent Sites:

- 4.2.1. PA Ref. No. P23/60084. Was refused on 14th August, 2023 refusing Richard Kent Jnr. and Janat Flannery permission for a dwelling house, sewerage system and percolation area, including site works, at Coolmeen, Ballyhale, Kilkenny:

- On the basis of the complete documentation submitted with this application, and having regard to third party submissions the Planning Authority is not satisfied that the applicant has demonstrated sufficient legal interest to carry out the proposed works in respect to surface dressing laneway upgrade, surface water drainage and access to the proposed dwelling in perpetuity.

In the absence of satisfactory demonstration of sufficient legal interest, surface water management and surface dressing specification/laneway upgrade, the proposed development would result in traffic intensification of use along a long laneway of restricted width and unfinished surface, which would constitute a traffic hazard and endanger public and traffic safety at this location. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. Development Plan

5.1.1. Kilkenny City and County Development Plan, 2021-2027:

Chapter 5: Economic Development:

Section 5.2.4: Agriculture & Food:

The Plan will facilitate and support the development of agriculture and food while ensuring the highest standards of environmental protection in the assessment of planning applications for all development proposals.

Chapter 7: Rural Development:

Section 7.2: Agriculture:

Agriculture is a vital part of the economic life of the County and is a major driver for sustaining, enhancing and maintaining the rural economy and culture. In recent years agriculture has contributed to the growth in export revenue.

Kilkenny has a well-established agri-food sector with food and drink production and processing representing a sizeable proportion of the local economy, see Chapter 5, Economic Development. The major companies operating in this sector within the county are Glanbia PLC and Connolly's Red Mills, complemented by an emerging

artisan food producer base of approximately 40 micro and medium sized food producers.

Chapter 13: Requirement for Developments:

Section 13.23: General Standards

5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Kilkeasy Bog Proposed Natural Heritage Area (Site Code: 000839), approximately 1.0km south of the site.
- The River Barrow and River Nore Special Area of Conservation (Site Code: 002162), approximately 2.3km northwest of the site.
- The Hugginstown Fen Special Area of Conservation (Site Code: 000404), approximately 2.7km southwest of the site.
- The Hugginstown Fen Proposed Natural Heritage Area (Site Code: 000404), approximately 2.7km southwest of the site.

5.3. EIA Screening

5.3.1. The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore does not require preliminary examination or environmental impact assessment. See Form 1 (attached).

6.0 The Appeal

6.1. Grounds of Appeal

- Inadequate consideration has been given to the contents of the appellants' initial objection to the proposed development.
- The initial report prepared by the Planning Authority fails to refer to an earlier planning application lodged on site under PA Ref. No. 09/103.

- The Planning Authority has failed to address the concerns raised in the appellants' initial objection as regards the legality of the site notices and discrepancies in the landholding map.
- There are inaccuracies in the existing and proposed floor areas referenced in the report of the Planning Authority.
- Greater clarity is required as regards the existing and proposed livestock numbers / stocking rates.

Although the planning report refers to the proposed development as housing 47 No. weanlings and 50 No. ewes, the response to the request for further information states that the 'proposed stock numbers' will total 194 No. animals (including 100 No. ewes). In addition, livestock numbers for the existing shed remain unclear while no reference has been made to the likely number of lambs which could potentially involve an additional 100 – 200 No. animals. Notwithstanding the inaccuracies in the stocking rates provided, the primary concern is that the proposal does not involve a low key / small scale development.

Furthermore, the provision of 2 No. feed areas suggests that the additional 94 No. suckler cows / weanlings / stores will be housed within the loose slatted shed while 100 No. ewes (and potentially a further 100 - 200 No. lambs) will be housed in the loose shed. It is also noted that no details have been provided of any potential calf numbers.

- Contrary to the applicants' assertion, there is no evidence of a shared right of way over the laneway on the submitted landholding map. This omission is also queried by reference to the requirements of the Planning and Development Regulations, 2001, as amended, which state that any such areas / rights of way should be marked in yellow (the recently gated 'spur' lane serving the site was previously used by Coillte to access its forestry lands and is identified as a 'Burden' on Land Registry mapping).
- The siting of the proposed development is not west of the existing development as claimed but rather to the east / southeast.

- Despite reference being made to the site location relative to the public road, the proximity of the development to the appellants' dwelling house / property is not stated nor would it appear to have been considered in the planning assessment.
- It is of concern that the initial planner's report (prior to the submission of further information) concludes that '*As the development will facilitate the expansion of an existing farm holding, it is considered an appropriate form of development for the rural area*'. Such a statement ignores the impact on the appellants' property and would seem to suggest that once the development is in a '*remote agricultural area*' it is acceptable regardless. This dismissal of third-party rights is concerning and contrary to proper planning.
- The assessment of the response to the request for further information fails to address the issues raised in the appellants' initial objection and does not fully consider the documentation submitted.
- It is unclear why the further information submitted was not deemed to be 'Significant'.
- The 'Agricultural Report' provided by way of further information does not include details of existing stock numbers.
- With respect to the assertion in the planning assessment that '*The applicant has demonstrated sufficient legal entitlement to use the laneway to access the site*':
 - The appellants are also registered owners of the laneway under Folio No. KK22259F (with equal legal entitlements) and have not consented to the making of the application. Furthermore, neither the applicants nor the appellants have full legal entitlement to alter or damage the laneway or to use it for whatever purposes they see fit.
 - Even if the applicants had full legal entitlement, this would not entitle them to expand or develop without due regard to environmental considerations, residential amenity, and the proper planning and development of the area.

In addition to civil matters, there are planning considerations which must be addressed.

- The assessment by the Planning Authority does not fully address the appellants' objections and fails to provide a satisfactory explanation as to how it arrived at a decision to grant permission, particularly in light of the concerns raised in relation to the adequacy of the laneway to support further traffic and the potential for the intensification of use to impact on the character of the lane and residential amenity.
- The existing laneway is narrow, lined with stone walls & vegetation, poorly surfaced, and was not designed or intended for use by modern farm machinery or for the scale of development proposed.
- The laneway originally connected the farm villages of Coolmeen and Kilkeasy and it is felt that the character of this rural environment is slowly being eroded.
- In addition to the potential impact of construction traffic, there are serious concerns as regards the further development, intensification and expanded use of the application site which would appear to involve an attempt to relocate existing storage and farm buildings and to use the laneway to facilitate same.
- Although the issues of construction traffic and an alternative access route were raised in the request for further information, these have not been addressed in the planning conditions.
- The subject proposal involves an incremental approach to the development of the site which has not considered the cumulative impact on the laneway or the appellants' property, residential amenity, and legal rights / entitlements.
- Notwithstanding that the volumes of heavy machinery and agricultural traffic (such as delivery trucks and slurry tankers) associated with the existing farming operation have increased in recent times, the appellants have never raised an objection despite the impact on their property and residential amenity. However, it is considered that the substantial expansion and intensification of use consequent on the proposed development will serve to unacceptably undermine their residential amenity further while also devaluing

their property and having an adverse impact on the laneway (over which they maintain part ownership and legal rights).

- There has been no prior consultation with the appellants as regards any development on the subject site.
- The proposed development would appear to be the next step in the creation of a new farmyard (to replace an existing smaller farmyard). However, contrary to what has been claimed by the planning authority, the proposed development is not located within an 'existing farm complex'.

The assertion has been made that 2 No. sheds with a combined floor area of 383m² amounts to a farm complex and, therefore, the doubling of the floor area to 790m² and the provision of a silage pit should be permitted. It is further estimated that stock numbers will increase from 98 No. to 192 No. while a total of 100 No. ewes are also to be housed (with no mention being made of any lamb numbers or calves associated with the weanlings).

Although the appellants are not opposed to anyone expanding or developing their farming enterprise and acknowledge that such activities are a part of rural life, in this instance, it is considered that the proposed development will have a negative impact on the environment and their property.

- The proposed development contravenes the policies set out in the Kilkenny County and City Development Plan.

6.2. Applicant's Response

- The purpose of the 'Agricultural Report' is to outline how the holding will comply with the requirements for the storage of slurry, farmyard manure and soiled water based on the future position of the holding should the proposed development proceed.
- The stock numbers outlined in the 'Agricultural Report' dated 20th May, 2024 (as submitted with the initial planning application) and the 'Agricultural Report' dated 17th October, 2024 (as submitted in response to the request for further information) outline the future position of the holding should the proposed development proceed. It is not envisaged that there will be any significant

increase in stocking rates due to the development of the proposed facilities. The existing numbers on the holding are broadly in line with the proposed stock numbers.

- The proposed manure pit will eliminate the requirement to store farmyard manure in paddocks and facilitate the improved management of soiled water and seepage (which will be collected in the proposed slatted tank).
- The additional loose area will negate the requirement to outwinter sheep. This will reduce the risk of poaching and will also be beneficial in terms of animal welfare and the ease of management of livestock over the winter period.
- The applicants' holding is a mid-season lowland flock. Therefore, as ewes lamb from early March both ewe and lamb will be turned out to pasture shortly thereafter hence lamb numbers are not included in the calculations for slurry, farmyard manure and soiled water storage in the Agricultural Report.
- The additional slatted area will allow the holding to keep some additional stock although the increase in the overall stocking rate is likely to be less than 10%. The main purpose of the slatted area is to provide additional slurry storage and feed space for existing stock numbers with some provision to keep a small number of additional bovines.
- The accompanying correspondence from the legal representatives of Michael Phelan, Eleanor Phelan, Keith Phelan & Conor Phelan includes a copy of Folio 12388F which shows that Michael Phelan and Eleanor Phelan are the owners of the lands contained in that folio, including half of the laneway referenced by the appellants. That part of the laneway owned by Michael Phelan and Eleanor Phelan is highlighted in yellow on the attached map and is subject to a Right of Way in favour of the Minister for Agriculture with the burden set out at Entry No. 2 of Part 3 of the folio.

The aforementioned parties, their family and their predecessors have used the laneway for in excess of 100 No. years (as have three other landowners) and a Statutory Declaration in relation to long use can be submitted if required.

- There is no requirement for the applicants to obtain the consent of the appellants to make the planning application.
- By way of background, Mr. Michael Phelan (the co-applicant) has lived and farmed in the locality for most of his life while his sons (the other co-applicants) have been involved in farming from a young age and have qualifications in agriculture. They each care about the environment and have always adhered to good farming practice. Accordingly, the purpose of the proposed development is to ensure that the farming operation stays 'ahead of the game' regarding slurry storage while the proposed dungstead will ensure that farmyard manure is stored and handled in a professional manner.
- With respect to the existing laneway, there are multiple rights of way along same and, therefore, it is queried how the appellants could have any issue with sharing their half of the lane given its historical use.
- Activities availing of the laneway have ensured its continued use (e.g. further along the lane is completely closed and unusable).
- The site notice / planning sign was erected on 24th May.
- The suggestion that a 'spur' lane has developed over time is rejected. The laneway in question is long-established and it is the applicants' understanding that there has always been a gateway at this location.
- In November, 2023 a contractor was hired by the applicants to tidy up the laneway and to fill potholes. These works were undertaken with the full knowledge of the appellants who had indicated that they would contribute to the costs of same.

6.3. Planning Authority's Response

- The assertion by the appellants that the planning issues raised in their objection were not considered / assessed is rejected. All points raised in the submission were read, considered and assessed with the planning application also being referred to the Council's Environmental Officer and Roads Engineer for their consideration.

- With respect to the purported discrepancies in animal stock numbers and building floor areas:
 - It is acknowledged that the planning report includes a typographical error as regards the existing and proposed floor areas.
 - Animal stock numbers were identified by the applicant in the agricultural report and were confirmed at further information stage.

The Environmental Officer has reviewed the stock numbers and design storage capacity and is satisfied with the proposed development in terms of the protection of the environment, compliance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2022 and the Department of Agriculture, Food and the Marine's Minimum Agricultural Specifications, and the conditions imposed.

- The 2 No. site notices were in place at the time of inspection in accordance with the Planning and Development Regulations, 2001, as amended, and are shown in the photos included in the planning report.
- The applicant has demonstrated sufficient legal interest to avail of access to the proposed development site via the existing laneway (through the submission of a landholding map and folio / land registry details). Furthermore, Section 34(13) of the Planning and Development Act, 2000, as amended, states the following:

'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

In this regard, developers are obliged to comply with other legislation and to avoid infringing on third-party rights.

- The appellant's dwelling house is located approximately 130m from the proposed development site which is sufficient separation to avoid any adverse impact on residential amenity.
- The nature of the alleged impact on the appellant's residential amenity is not clearly specified in the grounds of appeal.

- Other than for another farm dwelling located alongside the public road, the appellant's dwelling house is the only property which shares use of the laneway with the farmland. It is surrounded by extensive screening / landscaping which will serve to mitigate any potential impacts on residential amenity in tandem with the landscaping proposals submitted with the planning application.
- Both the existing and proposed agricultural buildings are positioned below the appellant's dwelling house in the rural landscape.
- It is noted that the appellants have no objection in principle to the applicants developing their farm enterprise.
- The scale of the proposed development and the anticipated stock numbers are not considered significant or overly large in comparison to other agricultural developments in Co. Kilkenny. Indeed, it is suggested that the proposal would be towards the middle to lower end of the scale for an agricultural development of the type proposed.
- It is not considered that the proposed development will give rise to a traffic hazard or otherwise impact on residential amenity or the heritage / character of the surrounding area.
- The site layout plan submitted by way of further information identifies two route options to the proposed development. The applicant proposes to avail of access via the existing laneway, however, the alternative access route (marked in orange) could be used for construction purposes in order to allay the appellants' concerns (should the Board be minded to consider this option) although it would likely require the importation of stone material to provide a safe base path for construction traffic.
- The existing laneway provides access to established farmlands while the site location is one of many such cul-de-sac laneways in Co. Kilkenny. There are many examples of similar such roadways where farmers carry out their livelihoods alongside rural dwellers. In this instance, the shared agricultural and residential use of the laneway is long established, and it is not anticipated that a grant of permission would introduce new unrelated agricultural traffic or

traffic intensification to such a level as to give rise to serious disruption, obstruction or hazard.

- Having regard to the site location along a narrow laneway (cul-de-sac) which is subject to low traffic speeds, and noting that the appellants' dwelling is located approximately 130m away from the proposed development, the traffic safety risks associated with the proposal are considered to be low.
- Having regard to the provisions of the Kilkenny City and County Development Plan, 2021-2027, the third party appeal submission, the rural site location, and the association of the proposed development with an existing farmyard, it is considered that the subject proposal would be acceptable and, subject to compliance with the recommended conditions, would not seriously injure the residential amenities or rural character of the area or the environment and would be acceptable in terms of traffic convenience.

6.4. Observations

None.

6.5. Further Responses

6.5.1. *Response of the Appellants to the Circulation of the Planning Authority's Submission:*

- The final report of the Environment Section provides no assessment of the additional details submitted by way of further information.
- Clarification is still required as regards the existing and proposed stock numbers.
- Given the site context, there is a need to consider the cumulative impact of the proposed development on the laneway, character of the area, and residential amenity.
- The Planning Authority has failed to address the discrepancies in the landholding maps submitted with the initial planning application.

- The appellants were never consulted as regards the proposed development nor was their consent sought (as part owners) for use of the laneway.
- No details have been provided of the applicants' spreadlands or whether it is proposed to transport slurry along the laneway for disposal off site.
- Clarity is required as regards the disposal of any excavated soil / subsoil.
- The impact of construction and operational traffic has not been adequately assessed.
- The existing laneway is gradually deteriorating through incremental damage caused by heavy traffic and excessive use with the result that concerns arise as regards the potential impact on adjacent structures, boundaries, walling, trees and hedging etc.
- It is of a policy of the Kilkenny County Development Plan '*To protect and where possible enhance wildlife habitats and landscape features which act as ecological corridors / networks and stepping stones, such as river corridors, hedgerows and road verges and to minimise the loss of habitats and features of the wider countryside . . . which are not in designated sites*'. Given the incremental widening of the laneway through the loss of its roadside verges, the existing and proposed development could potentially be contributing to the loss of a valuable wildlife corridor.
- The existing narrow / single track country lane is unsuited to the increased traffic consequent on the proposed development.
- The intensification of use proposed will not only significantly increase the scale of activity on site and along the laneway but will also alter its existing character and function. In this regard, the Board is referred to the judgement of the High Court in *Weston v. An Bord Pleanala* (2010) which emphasised the authority of planning authorities to prevent developments that could significantly alter the character or amenity of an area, even if such developments were expansions of pre-existing uses.
- The issue of the existing farmyard which is not located on site has not been addressed in terms of whether what is being proposed involves a relocation of existing uses to the application site.

- The proposed development site is not located within the confines of an existing farmyard. Instead, the proposed works will occur on 'greenfield' lands close to an existing farm shed in an area which is poorly defined in terms of boundaries and 'open' to a shared lane.
- The reference to the appellants' dwelling house being 130m from the proposed development site is spurious given that it overlooks the laneway and is set back c. 14m from same. Furthermore, the gable elevation of a shed in the appellants' ownership abuts the lane and is less than 30cm from the track. Accordingly, any use of the laneway impacts on the appellants' residential amenity in terms of privacy, noise, the movement of machinery and livestock, and the loss of planting / vegetation etc.
- Views from the first-floor windows of the appellant's dwelling house of an exposed and open farm building and silage bales are not very attractive.
- The conditions attached to previous grants of permission on site as regards landscaping / screen planting have not been complied with. In addition, a substantial extent of hedging along the laneway has been removed.
- No support is lent to the Planning Authority's determination that *'the scale of the proposed development and animal stock numbers is not considered significant or overly large in comparison to other agricultural planning applications in rural County Kilkenny'*.
- No consideration has been given to the planning history of the site and the cumulative impacts arising in the context of incremental development and intensification of use.
- Works involving the removal of boundary walls and the creation of a field entrance on the applicants' lands (contrary to the provisions of the Development Plan) are presently the subject of investigation and may constitute unauthorised development.
- Concerns remain as regards the loss of existing features and character associated with the farm village of Coolmeen, with particular reference to the ancient laneway which once connected the farm villages of Coolmeen and Kilkeasy.

- Due to the discrepancies / deficiencies in the submitted plans and particulars as previously identified, the planning application should have been declared invalid by the Planning Authority. Accordingly, the Board is referred to the judgment of the High Court in respect of Record No. 2018 740 JR wherein it was held that Section 37 of the Planning and Development Act, 2000, as amended, *'provides that where an appeal is brought to the Board against a decision of a planning authority, the Board shall determine it as if it had been made to the Board in the first instance and s.34(1) shall apply in relation to the determination of an application by the Board on appeal. Therefore, the Board must satisfy itself that the application has been made in accordance with permission regulations'*.

That judgment also states that *'The question of consent goes to the heart of the Board's jurisdiction to consider the application'* and that *'the requirement to obtain consent is mandatory rather than a directory requirement'*.

Therefore, it is submitted that the subject application is invalid, and the Board is precluded from making a decision on same.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- Procedural issues
- The principle of the proposed development
- Impact on residential amenity
- Impact on rural character
- Proposed use of the shared laneway
- Appropriate assessment

These are assessed as follows:

7.2. Procedural Issues:

- 7.2.1. Concerns have been raised as regards alleged deficiencies in the submitted plans and particulars, however, it is my opinion that there is sufficient information on file to permit a balanced and reasoned assessment of the proposed development and that procedural matters, such as a determination as to the adequacy (or otherwise) of the public notices and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the submitted documentation satisfied the minimum regulatory requirements. It should also be noted that the Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of the subject application. Moreover, it would appear that the alleged discrepancies identified by the appellants have not prejudiced their ability to make a submission on the planning application or to lodge the subject appeal.
- 7.2.2. With regard to the assertion that the site notice was not in place two weeks prior to the making of the planning application as required by Article 17 of the Planning and Development Regulations, 2001, as amended (and noting that the date the site notice was erected does not correspond with that stated on the notice itself i.e. 17th May, 2024), I am not in a position to verify any such claim as responsibility for checking the site notice lies with the Planning Authority. However, I note that the application itself was received by the Planning Authority on 24th May, 2024 and that the applicant has stated in response to the grounds of appeal that the site notice was in place on 24th May, 2024.
- 7.2.3. With respect to the differing depictions of the applicants' landholding shown on the submitted site location maps, having reviewed Drg. No. 5 (1:2500) and Drg. No. 6 (1:10560), while I would accept that there are certain inconsistencies, I would advise the Board that Article 22(2)(b) specifies that the site location map required to be submitted with a planning application should be '*to a scale (which shall be identified thereon) of not less than 1:1000 in built up areas and 1:2500 in all other areas, or such other scale as may be agreed with the planning authority prior to the submission of the application*'. Accordingly, I would suggest that Drg. No. 5 (1:2500) is the pertinent site location map for the purposes of validating the planning application and that the Planning Authority was correct in its decision to validate the application given its submission. It is of further relevance to note that a planning

authority is not in a position to verify the *bona fides* of an applicant's landholding or the specifics of land ownership at validation stage and, therefore, it would only be reasonable at the outset of the planning application process for an authority to rely on the accuracy of the submitted particulars. The additional documentation supplied by way of further information and in response to the grounds of appeal serves to clarify certain aspects of the applicants' landholding.

7.2.4. In relation to the absence of any indication of a right way of way (to any party) over the shared laneway on the submitted site location map (Drg. No. 5: 1:2500), while I would acknowledge that this omission is unfortunate, I would reiterate that in my opinion a planning authority must be allowed to rely to some extent on the accuracy of the plans and particulars initially submitted with a planning application otherwise the process by which a planning application is deemed to be valid / invalid could become overly cumbersome and unwieldy (such as necessitating complete land registry details to demonstrate ownership of land etc.). Regrettably, the applicants have not offered any reason as to why the right of way over the laneway is not shown on the site location map, and while I do not propose to engage in unfounded speculation, I note that the landholding as outlined in blue does not include the laneway (possibly as the laneway itself is held in shared ownership with the appellants) and that this may serve as some explanation if it is to be assumed that the applicants have interpreted the requirement of Article 22(2)(b)(iii) of the Regulations (i.e. that any wayleaves be shown in yellow) as relating solely to lands in their ownership. Notwithstanding, the purpose of the site location map required by Article 22(2)(b) of the Regulations is '*to permit the identification of the site to which the application relates*' and, in this regard, it is apparent that the particulars of the application as initially submitted to and validated by the Planning Authority have adequately served to identify the proposed development site. The documentation supplied by way of additional information and in response to the grounds of appeal provides further clarification as regards the appellants' concerns with respect to issues pertaining to the right of way.

7.2.5. In reference to inaccuracies contained in the report of the Planning Authority as regards certain matters (e.g. the existing & proposed floor areas and the description of the siting of the proposed development relative to the existing farm building), it is

my opinion that the issues / errors identified are of a minor nature and do not have any material bearing on the adjudication of this appeal.

- 7.2.6. With respect to the concerns raised as regards an alleged lack of consultation prior to the lodgement of the subject application, I would suggest that such matters are beyond the remit of the Board given that they are not expressly provided for under existing legislative provisions. The subject application accords with the regulatory provisions of the Planning and Development Regulations, 2001, as amended, including those requirements pertaining to statutory public notification, and any interested parties (including the appellants) were entailed to lodge submissions / observations on the application within the appropriate period and subject to the payment of the prescribed fee.

7.3. The Principle of the Proposed Development:

- 7.3.1. On the basis that the development in question is intended for agricultural purposes, and as the subject site will serve as an extension of an existing farmyard in a rural area where the predominant land use is agriculture, I am of the opinion that agriculturally related developments such as that proposed are an inherent part of rural life and should generally be accommodated within such areas. Accordingly, in light of the foregoing, and having regard to the scale and the intended use of the proposed development for agricultural purposes, I am of the opinion that the subject proposal is acceptable in principle at this location.
- 7.3.2. In specific reference to the overall scale of the development proposed and any associated intensification of farming activities at the subject location, I would refer the Board to the existing and proposed stocking rates set out in Appendix 2 of the planning application form along with the supplementary information provided in the accompanying 'Agricultural Report' (as superseded by the 'Agricultural Report' received by way of further information on 26th October, 2024). From a review of this documentation, it can be ascertained that the existing farm sheds accommodate 33 No. suckler cows, 14 No. stores (cattle) & 50 No. ewes (i.e. a total of 97 No. animals) while the stated intention is that the proposed shed will house 47 No. weanlings and 50 No. ewes (also totalling 97 No. animals). Accordingly, in the event the proposed development was to proceed, the future farming operation would appear to entail the

overwintering of 194 No. animals (comprising 33 No. suckler cows, 14 No. stores (cattle), 47 No. weanlings & 100 No. ewes) in the existing and proposed sheds.

- 7.3.3. In addition to the foregoing, it should be noted that the applicants' sheep rearing activities involve a mid-season lowland flock with ewes lambing from early March and thus account should also be taken of possible lamb numbers on the holding. In this regard, it has been submitted that both ewe and lamb will be turned out to pasture shortly after lambing (with the result that lamb numbers have not been included in the calculations for slurry, farmyard manure and soiled water storage), however, no details have been provided of possible lamb numbers. Although the appellants have suggested that there could be 100 No. lambs as a result of the proposed development, I would suggest that there are inherent difficulties in estimating lamb numbers given likely variations in the number of progeny produced due to factors such as sheep breed, prevailing conditions, and wider farming practices etc.
- 7.3.4. Broadly speaking, it would appear that the proposed development will result in an approximate doubling in the number of livestock to be overwintered on site with a corresponding increase in potential lamb numbers attributable to the increase from 50 No. to 100 No. ewes. However, on the basis of the information provided, I am inclined to concur with the Planning Authority that the farming operation proposed on site could reasonably be described as towards the middle to lower end of the scale for an agricultural development of the type proposed and would not be unlike similar farmholdings.
- 7.3.5. At this point, it of relevance to note that matters pertaining to animal husbandry and general good agricultural practice, such as the management of stocking rates and animal welfare, are more broadly subject to regulation by the Department of Agriculture, Food and the Marine. Furthermore, it has been indicated in the documentation provided with the subject application (Appendix 2 of the application form) that the total acreage of the applicants' farm extends to 159.62 No. acres and thus there would be a reasonable expectation of adherence to the requirements of the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2002, as amended (and any subsequent regulations). Accordingly, I do not propose to engage in unfounded speculation as regards the applicants' future farming activities consequent on the expansion proposed other than to state that all

farming practices will be required to adhere to the requirements of the Department of Agriculture, Food and the Marine which may involve changes such as revised stocking densities / rates or the preparation of an amended Nutrient Management Plan / landspreading arrangements etc.

- 7.3.6. On balance, I would accept that the proposed development involves the extension of an existing farmyard to accommodate an expansion of the applicants' farming activities and, therefore, will result in some intensification of use both on site and across the wider farmholding. However, I would reiterate my earlier position that agriculturally related developments such as that proposed are an inherent part of rural life and should generally be accommodated within such areas. Moreover, it is my opinion that the overall scale of the development proposed, when taken in conjunction with the existing operation, is not unusual or excessive given the site's rural context and is within tolerable limits.

7.4. Impact on Residential Amenity:

- 7.4.1. The primary concern raised in the grounds of appeal relates to the potential for the proposed development and any associated intensification of on-site activity to have a detrimental impact on the residential amenity of the appellants' property given its proximity to both the application site and the accessway serving same.
- 7.4.2. With respect to the siting of the proposed development relative to the appellants' property, I would advise the Board that the proposed loose / slatted shed will be located in excess of 130m from the appellants' dwelling house and will also be at a greater distance and a lower elevation relative to that property than the existing loose / slatted shed on the proposed development site. In addition, views of the new construction from the appellants' residence will be screened in part by intervening features such as planting and field boundaries as well as the existing farm buildings on site while the landscaping proposed along the eastern site boundary (in response to the request for further information issued by the Planning Authority) will act as a backdrop to the development while also serving to screen views from vantage points to the east. Accordingly, given the site context, including its location in a rural area where agricultural activity is an inherent part of day-to-day life, the separation distances involved, the screening afforded by intervening features such as existing buildings and landscaping, the broader relationship between the subject site and the

appellants' dwelling house, and as the proposed development will function as an extension of an already established and actively used farmyard, I am satisfied that the siting of the proposed development by itself will not give rise to any appreciable adverse impact on the residential amenity of the appellants' property.

7.4.3. The remaining concerns pertain to the intended use of the shared laneway which passes immediately alongside the appellant's property for construction and operational purposes. More specifically, reference is made to the impact of increased traffic movements, particularly those of heavy machinery and agricultural vehicles, along the laneway and the associated potential for additional noise, damage and general disturbance. While I would acknowledge that the proposed development will likely give rise to some intensification of use both on site and across the wider farmholding and that the expanded on-farm activities could result in increased traffic movements along the shared laneway, the overall scale of operations proposed is not decidedly different from other farming enterprises in rural County Kilkenny and is certainly not unusual in the broader context of rural Ireland. The proposal cannot be compared to more intensive farming such as installations for the intensive rearing of poultry or pigs and it is my opinion that the circumstances of the proposed development, including its comparatively limited scale and siting along a minor rural laneway, are commonplace in rural areas and an inherent part of typical agricultural practice. Accordingly, given the site context, the existing and long-established use of the laneway for agricultural purposes (and noting the appellants reference to the further historical use of the lane as a means of access between the rural clusters of Coolmeen and Kilkeasy), the limited scale of the proposed development, and noting that the proposal will not necessarily result in the use of larger farm machinery / vehicles or an increased frequency of traffic movements, I am unconvinced that the subject proposal and its usage of the existing laneway would give rise to such an additional impact on residential amenity as to warrant a refusal of permission.

7.4.4. While I would acknowledge that nearby housing, including the appellants' dwelling house, will likely experience some disturbance / inconvenience during the construction phase due to the movement of vehicles along the shared laneway and the associated noise and dust emissions etc., given the limited nature and scale of the development and as the construction works will be of an interim nature, I am satisfied that the short-term impacts arising will not give rise to any undue loss of

amenity to surrounding properties. However, should the Board have concerns as regards any use of the existing laneway for construction purposes, I would draw its attention to the alternative access route proposed in response to the request for further information as detailed in the amended site layout plan received by the Planning Authority on 26th October 2024. This alternative arrangement provides for a new construction access route extending from the public road through the applicants' landholding as far as the development site (thereby negating any requirement to use the existing laneway) although the Planning Authority has suggested that this will necessitate the importation of stone material to provide a safe base for use by construction traffic.

- 7.4.5. Therefore, on the basis of the foregoing, it is my opinion that the proposed development will not give rise to any significant additional impact on the residential amenity of the appellants' dwelling house and by extension will not result in the devaluation of that property.

7.5. Impact on Rural Character:

- 7.5.1. With respect to the suggestion that the proposed development will erode the rural character of the surrounding area, such as through the incremental widening of the shared laneway which historically linked the farm villages of Coolmeen and Kilkeasy, while I would accept that the regular use of larger farm machinery along narrow lanes can result in an element of carriageway 'creep' through damage to grass verges and roadside vegetation etc., it should be acknowledged that the rural landscape is not a fixed entity and that patterns of land use and farming practices are not static and change over time. The proposed development is an inherently agricultural use typical of the Irish countryside and in this regard the overwhelming character of both the application site and the access laneway will continue to be rural. Although there will be some physical changes to the landscape consequent on the proposed development, these are relatively minor and of little consequence in a broader context.

7.6. Proposed Use of the Shared Laneway:

- 7.6.1. The proposed development site is accessed via a private laneway which is held in the shared ownership of one of the co-applicants (Mr. Michael Phelan) and the appellants (with both parties retaining a right of access over same). In this respect,

some concerns have been raised as regards the potential for the proposed development to result in the alteration or damage of the laneway while it has also been asserted that the applicants are not entitled to utilise the laneway to accommodate an expansion of their operation without having due regard to environmental considerations, residential amenity and the proper planning and sustainable development of the area.

7.6.2. It is my opinion that any damage to, or interference with, the appellants' property / rights attributable to the proposed development is essentially a civil matter for resolution between the parties concerned and in this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*' and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property. The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. It is not the function of the Board to adjudicate on property disputes or to act as an arbitrator in the assessment of damages and should a party consider that any grant of permission cannot be implemented because of property or title issues, then Section 34(13) of Act is relevant.

7.6.3. Matters pertaining to residential amenity and the broader principle of the proposed development have already been assessed elsewhere in this report.

7.7. Appropriate Assessment:

7.7.1. Compliance with Article 6(3) of the Habitats Directive:

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under Part XAB, Section 177U of the Planning and Development Act, 2000 (as amended) are considered fully in this section.

7.7.2. Background on the Application:

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to

appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

- 7.7.3. In response to a request for further information, on 26th October, 2024 the Planning Authority received a report titled '*Proposed loose / slatted shed at Coolmeen, Ballyhale, Co. Kilkenny: Appropriate Assessment (Screening)*' prepared by Roger Goodwillie & Associates and dated August, 2024.
- 7.7.4. This screening report has identified 3 No. Natura 2000 sites within 15km of the site, however, the only connectivity pathway for potential impacts was found to be a possible hydrological connection between the application site and the River Barrow & River Nore Special Area of Conservation and the River Nore Special Protection Area via minor watercourses (and the Little Arrigle River). Having scoped out the remaining Natura 2000 site (the Hugginstown Fen Special Area of Conservation) within the study area, the report proceeds to focus on the potential for the release of contaminants / pollutants to the aquatic environment during the construction and operational phases of the development.
- 7.7.5. The AA Screening Report concludes as follows:
- 'It can be said that there is no likelihood of significant negative effects on the integrity of the River Barrow & River Nore SAC, the River Nore SPA or any of the Natura 2000 network from the proposed development. It will not compromise the attainment of the conservation objectives of the sites.*
- This holds for the project by itself or in combination with other projects in the vicinity'.*
- 7.7.6. Having reviewed the documentation submitted with the application, and the submissions received, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

7.7.7. Screening for Appropriate Assessment - Test of likely significant effects:

The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

7.7.8. The proposed development is examined in relation to any possible interaction with European sites, i.e. designated Special Conservation Areas (SAC) and Special Protection Areas (SPA), to assess whether it may give rise to significant effects on any European Site.

7.7.9. The applicant provides a description of the project in Section 3.2 of the Screening Report and elsewhere in the application documentation. In summary, the subject proposal comprises the construction of a loose / slatted, an underground slatted tank, manure pit, concrete aprons and all associated site works.

7.7.10. An overview of the baseline environment is provided in Section 2 of the Screening Report wherein the development site is described as occupying a location on undulating land of the Kiltorcan sandstones on a slight slope above woodland patches and a few small ponds. It is further stated that the larger field of which the subject site forms part comprises 'Improved Agricultural Grassland' which is grazed by cattle and bounded by hedgerow. While there are two ponds locally (one in the southeast corner of the same field), the closest watercourse is a stream approximately 200m east of the site which flows northwards into the Little Arrigle. More broadly, the site is considered to be of low ecological value with no features of interest although it is accepted that the wider surroundings likely support a significant level of biodiversity (e.g. badger, fox, rabbit, and various bird species). No invasive plant species are recorded either on site or in the area.

7.7.11. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Deterioration of water quality as a result of uncontrolled surface water / silt / construction related pollution.
- Deterioration of water quality during the operational phase of the development due to contaminated runoff post construction.

7.7.12. Submissions and Observations:

All submissions and observations received from interested parties are set out in Section 3.0 of this report.

7.7.13. European Sites:

The development site is not located in or immediately adjacent to a European site. It is located approximately 200m west of a stream which flows north to join the Little Arrigle River, approximately 3.0km downstream, whereupon it enters the River Barrow and River Nore SAC. The River Nore Special Protection Area is approximately 8.4km to the northeast. A summary of European Sites that occur within a possible zone of influence of the proposed development is presented in the table below. Where a possible connection between the development and a European site has been identified, these sites are examined in more detail.

European Site	Qualifying Interest / Special Conservation Interest	Distance from the proposed development	Connections (source-pathway-receptor)	Considered Further in Screening
River Barrow and River Nore Special Area of Conservation (Site Code: 002162)	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Water courses of plain to montane levels with	c. 3.0km north of the site.	Potential hydrological	Yes.

	<p>the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260]</p> <p>European dry heaths [4030]</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]</p> <p>Petrifying springs with tufa formation (Cratoneurion) [7220]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]</p> <p>Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]</p> <p>Nore freshwater pearl mussel Margaritifera durrovensis [1990]</p>			
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	<p>Austropotamobius pallipes (White-clawed Crayfish) [1092]</p> <p>Petromyzon marinus (Sea Lamprey) [1095]</p> <p>Lampetra planeri (Brook Lamprey) [1096]</p> <p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Alosa fallax fallax (Twaiite Shad) [1103]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Trichomanes speciosum (Killarney Fern) [1421]</p>			
River Nore Special Protection Area (Site Code: 004233)	Kingfisher Alcedo atthis [A229]	c. 8.4km northeast of the site.	Potential hydrological	Yes.
Hugginstown Fen Special Area of Conservation (Site Code: 000404)	Alkaline fens [7230]	c. 2.7km southwest of the site.	Given its location in a watershed upgradient of the development, no connectivity pathways are likely.	No.

7.7.14. Identification of Likely Effects:

All of the above sites are at a remove from the proposed development site with only a weak indirect hydrological pathway via surface water runoff potentially affording connectivity to the River Barrow and River Nore Special Area of Conservation and the River Nore Special Protection Area further downstream.

7.7.15. The construction phase of the proposed development will involve earthworks and the disturbance of soil etc. which gives rise to the possibility of indirect negative impacts on downstream water quality through the accidental release of suspended solids / sediment etc. or the discharge of hydrocarbons and / or other pollutants by way of contaminated surface water runoff. In this regard, drains or watercourses could act as a hydrological conduit for contaminated surface waters between the development site and the aforementioned European Sites with any associated deterioration in water quality having a potentially negative impact on downstream aquatic habitats and species (e.g. Otter & Salmon) identified as qualifying interests / special conservation interests within the SAC & SPA (such as through changes in water chemistry, the loss of spawning grounds, and reduction in prey species).

7.7.16. The implementation of standard best practice construction measures will prevent pollutants entering surface waters. Furthermore, given the physical separation distance of c. 200m between the proposed works area and the closest tributary stream that flows into the Little Arrigle River which forms part of the River Barrow and River Nore Special Area of Conservation (in excess of 3.0km downstream hydrologically), the likely dilution and dispersion attributable to the hydrological separation distance of c. 3.0km between the tributary stream and the SAC, the limited nature and duration of the construction works, and the application of normal good construction / building practice, it is considered that the weakness of the hydrological pathway is such that significant downstream effects / water quality impacts within the SAC (and onwards to the SPA) are unlikely.

7.7.17. No impacts on water quality are anticipated during the operational phase of the development as effluent generated within the slatted shed (and soiled water runoff from the manure storage) will be directed to the underground tank which is to be designed in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended.

7.7.18. Adherence to best practice measures during the construction stage, and compliance with the relevant regulations and standard conditions pertinent to the operational phase, are not mitigation measures intended to reduce or avoid any harmful effect on any Natura 2000 site and would be employed by any competent operator, notwithstanding any proximity to any Natura 2000 site.

7.7.19. Therefore, having regard to the nature of the proposed development, and the physical and hydrological separation between the site and European sites, I am satisfied that there is no potential for likely significant effects on any designated site.

7.7.20. Cumulative / In-combination Effects:

It is not envisaged that the proposed development will give rise to any in-combination / cumulative effects.

7.7.21. Mitigation Measures:

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

7.7.22. Screening Determination

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on the River Barrow and River Nore Special Area of Conservation (Site Code: 002162), the River Nore Special Protection Area (Site Code: 004233), or any other European site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.7.23. This determination is based on the following:

- The information on file, which is considered adequate to undertake a screening determination;
- The nature, scale and design of the proposed development;
- The nature of the receiving environment; and

- The physical and hydrological separation distance of the proposed development from the European Sites.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the planning history, the location of the proposed development within an established farmyard and to its nature and scale, it is considered that, subject to compliance with the conditions set out below, the proposed development would be an appropriate land use in this rural and agricultural area, would not seriously injure the amenities of the area or of property in the vicinity, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The proposed 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 26th day of October, 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 proposed development shall be carried out and completed in accordance with the agreed particulars.

Reason: in the interest of clarity.

2. The slatted shed shall be constructed in accordance with the specifications as issued by the Department of Agriculture, Farming and the Marine and referenced in the European Union (Good Agricultural Practice for the Protection of Waters) (Amendment) Regulations, 2022, as amended. The slatted shed shall be used only in strict accordance with a management schedule which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The management schedule shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations 2022, as amended, and shall provide at least for the following:

- a) Details of the number and types of animals to be housed,
- b) Arrangements for the collection, storage and disposal of slurry,
- c) Arrangements for the storage and disposal of manure, and
- d) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

Reason: In order to avoid pollution and in the interest of residential amenity.

3. All oxidisable and galvanised surfaces of the proposed development shall be painted a dark green matt colour or similar dark matt colour and shall be maintained in perpetuity.

Reason: In the interest of visual 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, and
- b) all soiled waters shall be directed to an appropriately sized soiled water 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 in this regard 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. All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the proposed and existing storage facilities and no effluent or slurry shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

Reason: In the interest of public health.

6. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.

Reason: In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

7. The removal of organic waste material and its spreading on land by the applicant or third parties shall be undertaken in accordance with the 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.

Reason: In the interest of environmental protection.

8. The landscaping scheme shown on drawing number FI2 as submitted to the planning authority on the 26th day of October, 2024 shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

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.

Robert Speer

Senior Planning Inspector

25th March, 2025

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála	ABP-321484-24		
Case Reference			
Proposed Development Summary	A loose / slatted shed, manure pit, concrete aprons and associated site works necessary to facilitate the proposed development.		
Development Address	Coolmeen, Ballyhale, Co. Kilkenny.		
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	✓
		No	
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	✓		
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			
No	✓		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			

No	✓	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ **Date:** _____