

SECTION 131 FORM

04/07/22

Appeal NO: ABP 313388-22 ⁷⁸

Defer Re O/H

☐

TO:SEO

Having considered the contents of the submission dated (received) 21st June 22
from the Johnston Family

I recommend that section 131 of the Planning and Development Act, 2000
be/not be invoked at this stage for the following reason(s): no new material issues raised

E.O.: Karen Hickey Date: 22/6/22

To EO: _____

Section 131 not to be invoked at this stage. ☐

Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____ Task No: _____

Allow 2/3/4weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ABP 313378-22

M _____

Please treat correspondence received on 21st June '22 as follows:

- | | |
|--|--|
| 1. Update database with new agent for Applicant/Appellant _____
2. Acknowledge with BP <u>20</u>
3. Keep copy of Board's Letter <input type="checkbox"/> | 1. RETURN TO SENDER with BP _____
2. Keep Envelope: <input type="checkbox"/>
3. Keep Copy of Board's letter <input type="checkbox"/> |
|--|--|

Amendments/Comments

Response from the Johnston family
to S131

4. Attach to file

- | | |
|---|---|
| (a) R/S <input type="checkbox"/> | (d) Screening <input type="checkbox"/> |
| (b) GIS Processing <input type="checkbox"/> | (e) Inspectorate <input type="checkbox"/> |
| (c) Processing <input type="checkbox"/> | |

RETURN TO EO ☒

Karen Hickey

	Plans Date Stamped <input type="checkbox"/>
	Date Stamped Filled in <input type="checkbox"/>
EO: <u>Karen Hickey</u>	AA: <u>Daniel O'Connor</u>
Date: <u>21/6/22</u>	Date: <u>22/6/22</u>

K. Hickey

Jennifer Carleton

From: Sean Johnston [REDACTED]
Sent: Tuesday 21 June 2022 11:59
To: Appeals2
Subject: Case Ref. 313378 - Section 131 submission
Attachments: Ref. 313378 - Section 131 Submission.pdf

Dear Sir/Madam,
Re. Pl. Ref. 21/1449 Louth Co.Co.
Case ref. 313378

211499

Please find our Section 131 observation letter attached in respect of response by the applicant to our 3rd party appeal submission.

Kind Regards,
Sean Johnston

Sean Johnston on behalf of the Johnston Family
Puckstown
Dunleer
Co. Louth
19th June 2022

21

Re: Section 131 Request in respect of File Ref. No. 21/1499 Louth County Council

Dear Sir,

In response to the Section 131 request and the First Party's response to the Third Party submissions we wish to make the following comments:-

- The response from the First Party is a generic non scientific response that provides no scientific evidence to support the comments that the proposal is acceptable and would not have an undue environmental impact. As set out in our submissions previously, the EIAr is simply fundamentally flawed, lacking scientific data to reach the conclusions that the proposal would not have an undue impact on the environment.
- The proposed activity while agricultural in nature is of a commercial scale and will have significant ramifications for adjoining landowners including our family lands which have been farmed for generations. The principle and justification for the development has not been established at this location for reasons already set out in our original appeal. The applicant has not provided any reasonable justification for the proposed development at this location along a substandard rural lane, where there would be significant traffic movements to and from the site to other commercial premises that are located significant distances resulting in unsustainable carbon emissions as a consequence of the traffic movements.
- The First Party has been selective in terms of the contents of the submission as to what they have responded to.
- The reference to the Supreme Court case *An Taisce v Glanbia* is not of relevance to this application, as our contention is that the EIAr does not adequately provide or establish baseline details for the environment, but rather relies on quotations from national and regional documents, and a raft of generic statements that are repeated throughout the document. There is no question in this instance of "artificially expanding" the EIA Directive but rather simply seeking the adequate identification, description and assessment of direct and indirect effects. The EIAr is not objective and simply seeks to present the narrative that the subject development is acceptable because it is agricultural.
- The First Party sets out in response to Appeal No. 2 Stephen Ward on behalf of the Grogan Family, that "there would be no logical reason to bring poultry manure into the (understood to be Monaghan) county". This statement, demonstrates that the traffic journey for depositing the poultry manure will be local i.e. spread on his existing landholding and therefore clearly demonstrates that the manner in which they dealt with the concerns the Board previously had in respect of Appropriate Assessment is simply a means of circumventing the process so they don't have to deal with this issue. It also gives rise to a scenario where there is a significantly dangerous precedent whereby future applications would put forward similar proposals thus avoiding the very issue appellants had concerns

with in the first instance, unacceptable effects on the environment that have not been properly considered or assessed. Manure management has not been addressed. The Board cannot be certain that the manure will in effect end up in mushroom composting plants and a condition to this effect would be ultra vires and unenforceable. No scientific detail has been provided to establish that there is a need for the level of manure in the first instance – simply generic statements by the applicant.

- In response to the hedgerow removal, for the first time the Applicant acknowledges that the hedgerow removal is significant, yet there is no assessment of this in the EIAR in ecological terms. Bats and other mammals, insects etc. all use these hedgerows which are to be lost. Reference is made to replanting of hedgerow elsewhere on farm/landholding. Again no evidence of this presented and in fact many of the traditional field patterns and hedgerows have been removed on this landholding as is evidenced on the landscape to all. The reference to the replanting of 1km elsewhere is paltry given the extent that has been lost through the years on this very site.
- With regards to the comments provided in response to Food Wise 2025, the First Party rely heavily on generic statements such as “poultry meat has the lowest carbon footprint”. This may be the case with regards the general production however in this instance, the rationale for the location of the development is such that cannot be sustained. No carbon footprint measurement has been presented by the applicant. Why not? Given the level of traffic movements and distances to be covered transporting young chicks in and then transporting to processing plants along with the poultry manure movements to Kildare / Wexford the development simply could not reasonably have an acceptable carbon footprint.
- The response indicates that Manor Farms are seeking to develop and increase their farmer supply base in a more balanced way. The complete lack of a rationale for selecting this site is concerning and given the statement that Manor Farms seek to expand is all the more important to ensure that Ireland’s net zero targets can be reached and that the effects on the environment are properly assessed. Incidentally, there is no letter in the submitted documentation from Manor Farms to support this development.
- In response to EIAR inadequacies, we have always contended that the issue of “alternatives” has never been addressed properly. The applicant has indicated in his response that “The applicant is limited in the land areas available to him and has detailed to Louth County Council his selection process.” This confirms that site selection was too narrow in that only the sites owned by this farmer were considered for this development. While the submission states that Manor Farms are a significant business seeking to expand farming supply base, this should not limit the consideration of alternative sites just because one particular farmer is seeking to supply Manor Farms. As per the previous Inspector’s report the issue of rationale for site selection and justification for the development at this location has not been adequately addressed and should be the substantive reason for refusal. The applicant has completely failed to present any justifiable reason for selecting this site given the complete lack of carbon footprint measurement and the scale of the development at this location completely detached from supporting infrastructure / processing facilities.
- The EIAR submitted is inadequate and lacks objectivity. The EPA Guidelines on the information to be contained in an EIAR sets out that “Objectivity has two key components. The first is derived from the rigour of the assessment and analysis. This ensures that replicable work based on high-quality scientific information is carried out using recognised

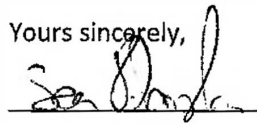
methods that are presented in a fully transparent manner". As per previous submissions, the EIAr does not adequately assess or analysis the likely significant effects in a high-quality scientific manner. The baseline information is weak and cannot be relied on.

- The response that the EIAr essentially sets out the business plan/case for the proposed development, essentially the diversification of existing farming activities to meet the demand for food and imports is not a business plan. There is a complete lack of objective market assessment, clear objectives for this landholding and strategy as to how these are to be achieved. The response documentation would suggest that Manor Farms is the driving force to expand farmer supply without any clear vision or plan as how this is to be achieved in a sustainable manner.
- With regards to Appeal No. 3 – the reference to potential restrictions on cross border movement is not such that justifies the proposal in this case. Presently, a significant amount of manure from the North of Ireland is brought across the border due to the rigorous procedures regarding the spreading of nitrogen on lands in the North.
- The First Party has provided no response regarding the development and how it could reasonably be demonstrated that the poultry manure from this development would not be spread on the farmer's land. The Board would be relying on the applicant to keep records of where the manure is transported to when it leaves the site. There would be no possible way of enforcing this. This issue also clearly demonstrates the lack of a clear rationale for this development and that the conditions attached to the grant of permission by the planning authority are ultra vires and unenforceable. This is a significant concern given the extent of landspreading that occurs on the landholding in question and there is caselaw on this very issue, *Community Association for Restoration of the Environment v. Cow Palace, LLC*. The Judge found that manure met the definition of solid waste. The court reasoned that manure falls within the term "discarded material" when it is over applied to fields or stored in such a way it seeps into the groundwater. In these instances, the manure is no longer beneficial as a fertilizer, and is, instead, a solid waste.
- While the First Party are not proposing to landspread the manure from the proposed development, in the first application they were. The proposal now put forward to send the manure to mushroom composting facilities is simply a means of dealing with the reason for refusal issued previously by the Board. The EIAr does not address the capacity of existing facilities to accept this manure, what happens when there is an oversupply and more concerning is that the public has no means of determining the origin of the manure spread on the farmer's landholding. The Board should consider the development consent process in this instance as a whole for the purposes of the EIA Directive given that there would be more than one stage i.e. disposal of manure generated by the development. There is significant case law that establishes that the whole project, should be assessed. In *Sweetman v ABP & Ors*, the Judge set out that "specifying particulars of the works is the statutory obligation – not to seek permission for a project that is open ended at one end of the scale...." The proposal in this instance, is seeking to effectively ignore potential environmental effects of the transportation and use of poultry manure to composting facilities. While this principle may promote a circular economy, this does not negate the need for full consideration under the EIA Directive. As the principle or rationale for the site selection has not been established, this issue is somewhat a moot point but demonstrates the complete absurdity of the proposal that is being presented, to avoid dealing with waste/manure.

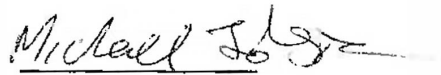
- The reference that the "author misunderstood the objectives of Food Wise 2025" is very disingenuous given that there is no reference to Food Wise 2025 in our submission. The Farm to Fork Strategy was cited and there was no misunderstanding. This strategy seeks to reduce carbon footprint and reverse the loss of bio-diversity amongst others objectives. The EIAr does not demonstrate that the proposed development would in fact achieve or contribute to these objectives. As set out in this response heretofore no Carbon footprint measurement for the proposal has been submitted and therefore there is no evidence base in which it can be clearly concluded based on scientific evidence that this development would accord with the proper planning and sustainable development of the area.
- In response to the traffic hazard, the fact remains that this is a substandard rural road which the Board previously refused permission for on this basis. The provision of 4 no. lay bys does not address this concern but rather results in the loss of further hedgerows in a rural location with the consequential visual impact and loss of bio-diversity.
- With regards to the manure being stored close to a watercourse, it is noted that the applicant indicates this is "stone". While the aerial photography is available to the Board to make their own conclusion, the fact of the matter is that the applicant considered any material appropriate to store alongside a watercourse. The creation of roadways within farmlands is not exempted development and again is of significance on this landholding given the extent of the roadways, provision of alternatives in terms of access, and the location of same adjoining water-courses and the potential for pollution. These issues are directly relevant to this proposal on the basis that the EIAr has completely failed to consider the full extent of activities on the landholding and the cumulative effects on the environment where the poultry houses are proposed.
- With regards to the additional comments and specifically the application of the Development Contribution Scheme, the applicant is seeking to not pay contributions in respect of the development. The development is considered commercial in nature, albeit an agricultural practise, the proposal is for intensive farming where both chickens and the manure is to be used for commercial gain. Yet, the applicant is somehow trying to justify the off-setting of the development contributions applied without actually presenting a narrative. The fact is that this is a new development, for commercial gain and could not be considered as being required to comply with the EU Nitrates Directive/Regulations or to comply with animal welfare measures. The applicant has not demonstrated that the proposed is approved for grant support.

It is respectfully requested that the proposed development be refused again. The applicant has not addressed the previous reasons for refusal cited by the Board pertaining to EIAr and traffic grounds. All of our previous submissions have dealt with the inadequacies pertaining to the EIAr, lack of a justifiable reason for selecting this site vis-a-vis the location of supporting operational infrastructure required. In fact, if permission is permitted for this, the Board would be establishing a very undesirable precedent for the circumvention of planning policy and environmental considerations in respect of landspreading and how the disposal of manure is to be considered from an environmental perspective. The distribution of manure to mushroom composting facilities is not an appropriate solution and the EIAr fails to consider the environmental impacts arising from same.

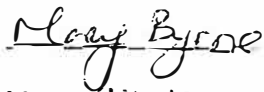
Yours sincerely,

A handwritten signature in dark ink, appearing to read "Sean Johnston", written over a horizontal line.

Sean Johnston on behalf of the Johnston Family

A handwritten signature in dark ink, appearing to read "Michael Johnston", written over a horizontal line.

Michael Johnston

A handwritten signature in dark ink, appearing to read "Mary Byrne", written over a horizontal line.

Mary and Noel Byrne