

Cean Johnston on behalf of the Johnston Family  
Puckstown  
Dunleer  
Co. Louth  
18<sup>th</sup> April 2022

<b>AN BORD PLEANÁLA</b>	
LDG- <u>051327-22</u>	
ABP- _____	
19 APR 2022	
Fee: € <u>220</u>	Type: <u>CARD</u>
Time: <u>13:27</u>	By: <u>U.N.D</u>

*Encl. Letter of Acknowledgements and Fee*

**Re: Third Party Appeal in respect of File Ref. No. 21/1499 Louth County Council**

**Introduction**

Louth County Council granted permission for 4 no. poultry houses on 24<sup>th</sup> March 2022 subject to 24 No. conditions. We the undersigned who made submissions to the Planning Authority (letters of acknowledgement for each party enclosed) are appealing this decision and urge the Board to refuse permission. The applicant is Mr. Michael Callan and the Planning Reg. Ref. No. is 21/1499.

The proposed development comprises of permission to construct 4 no. poultry houses at Rathescar Middle/Gunstown/Whiteriver, Dunleer, Co. Louth.

**Planning History**

An application for a similar development on this site (Case Ref. PL15.307333) was previously refused by An Bord Pleanála for 3 No. reasons as follows:-

1. On the basis of the information provided with the application and the appeal, particularly in relation to the landspreading areas, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European sites (Dundalk Bay Special Protection Area (Site Code: 004026) and Dundalk Bay Special Area of Conservation (Site Code: 000455), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.
2. Due to the inadequacy of the information provided to the Board, particularly in relation to the landspreading areas and biosecurity, the Board is unable to carry out a comprehensive environmental impact assessment of the proposed development as required by legislation, therefore, to permit the proposed development would be contrary to the proper planning and sustainable development of the area.
3. Having regard to its scale and nature, and the HGV traffic which would be generated, and the inadequacy in width and alignment of the local road, the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users and would, therefore, be contrary to the proper planning and sustainable development of the area.

### **Appeal Grounds:**

It is submitted that the previous reasons for refusal have not been addressed as part of this application.

The concerns of the previous application and lack of baseline information regarding all aspects of the environment contained in the EIA remain. Notwithstanding this, in the interests of brevity, the contents of this appeal will focus on the reasons for refusal of the previous application and the core issue of establishing the principle and need for the development at this location.

There are anomalies and discrepancies within the EIA and the further information submitted. The further information submitted was not re-advertised for the public to make comments. One would have considered that information that should have formed part of the EIA such as alternatives, the discrepancies contained in the EIA that were required to be clarified such as references to landspreading when there is supposed to be none would have been considered significant to enable the public to comment further.

### **Appropriate Assessment and Landspreading**

As part of this revised application, the applicant is proposing that there would be no landspreading and that the manure produced would be transported in its entirety to mushroom composting plants. There is no detail of the quantum of fertiliser required by mushroom composters or the current availability of manure available to the mushroom industry, and no detail of limitations or restrictions by quantity or type of waste intake imposed on these facilities by any Planning Permissions and/or EPA Licences that may exist. At present, a significant quantum of manure is transported to the south from the north of Ireland due to the saturation of lands with nitrogen and phosphorous. No detail has been provided within the EIA other than generic statements to state that there is capacity for mushroom composters to accept the manure. Moreover, the statement that there will be no landspreading is considered a means of circumventing providing scientific and technical data required as part of the appropriate assessment and the EIA to demonstrate that there would be no significant effect on any European site or the environment in general. It also brings into question the principle of reasonableness i.e. whether it is reasonable to accept that the manure generated by this development would be transported to mushroom composters, located a significant distance from the site. Should the Board permit such a practice, it will set a very dangerous precedent for other similar developments to circumvent the Habitats and Water Framework Directive and will ultimately lead to increased judicial review on environmental matters. Essentially this proposal runs counter to sustainable development and fails to address climate change and carbon footprint generated as a result of this development. It is also not clear what happens in the scenario that mushroom composters no longer need the manure produced – future scenario that has not been mitigated.

### **Inadequate EIA**

The deficiencies in the EIA have not been addressed. The report comprises of generic statements providing the pre-determined narrative that the development is acceptable. There is a serious lack of scientific detail to support the generic statements. There is no analysis of the effects arising from the development in the context of the Water Framework Directive with no reference to same from the Planning Authority. The EIA does not address climate, land, risk of major accidents and disasters or

Establish the baseline scenario in accordance with the provision of the Article 94 of the Planning and Development Regulations in particular Schedule 6.

The EIA contains a preponderance of generic statements such as “the applicant has decided to prioritise the allocation of poultry manure from this farm to mushroom compost production”, “it is envisaged all chickens from proposed farm are to be supplied to Carton Bros/Manor Farm”, “it is considered that all deficiencies identified have been appropriately addressed”, “as the predominant volume of traffic will be associated with the transport of birds/feed to / from Manor farms processing and feed milling facilities at Shercock, it is deemed prudent to locate the proposed development closer to same, than the mushroom compost facilities, “all poultry manure from the proposed development is primarily destined to support the horticultural (or other such sectors) as a resource ingredient in mushroom compost (or other such approved processes) production”. The dearth of supporting scientific data within the EIA is concerning.

The concerns regarding inadequacy of information provided within the EIA remains and, therefore, it is not possible for the Board to carry out a comprehensive environmental impact assessment of the proposed development as required by legislation. It is also concerning that the narrative of the EIA is that all poultry manure is destined for mushroom compost with qualifying statement followed by “or other approved processes”. This clearly suggests that the intention is to circumvent the planning process and importantly the issue of landspreading where Habitats and Water Framework directive issues arise. This issue is set out in more detail under the heading ‘Planning Authority reports’ on page 4.

No analysis of bio-security for both the proposed development and adjoining agricultural lands owned by other local farmers has been provided. In fact, in the further information response, it is set out that this location was selected so as to ensure adequate distance from Mr. Callan’s other enterprises. The Johnston family farm lands in close proximity to this site, having done so for generations, and share the same concerns that the applicant has himself regarding the proximity of a poultry farm to dairy/other livestock. The issue of biosecurity as cited in the previous reason for refusal has not been addressed.

The issue of an elevated water table effectively was dismissed within the application and the Planning Authority’s assessment which is concerning given that trial holes carried out in April noted a high water table. In the winter months the water table would be even higher. It is also noted that further information submitted in considering alternative sites refers to “benefitting lands” at Rathescar. This term has not been explained and is assumed to refer to works under the Arterial Drainage Schemes, which has improved drainage on the lands. There is no scientific data provided within the EIA to fully understand the nature of benefitting lands and how this was considered having particular regard to the EIA, Habitats and Water Framework Directives. It is not reasonable to assume any member of the public can be confident given the lack of evidence based data that this has been assessed in any scientific or meaningful way other than generic statement being used to support a predetermined narrative. It is assumed that the Planning Authority has also not considered these issues and therefore there is a lacuna in which the public cannot be clear as to how it was concluded that the proposed development considering mitigation or otherwise would not have a significant impact on the environment.

The issue of alternative sites despite the Planning Authority seeking further information in this regard has not been addressed. The applicant states he farms c. 325Ha of land as set out in the EIA yet the information submitted only identifies c. 150Ha of land that was considered. It is also concerning that the reason for discounting particular sites is based on generic statements like "due to the fact that there are multiple houses to the north, south east and west within short distances of this site was excluded from further consideration". This statement refers to Block 1 in Roestown and yet the nearest dwellings are similar to the final site that was selected. The further information introduces the issue of 'benefitting lands' as part of the consideration of alternative lands but provides no context for same. The Stage 1 summary of alternative sites makes no sense. No legend is provided to understand the criteria being assessed and simply contradicts why certain sites were advanced while others were not. Reference is made (sites 6 and 7) to a 'sand and stone permit', yet no details as to what development this pertains to is provided. There does not appear to be any planning permission in place. Bio-security is referenced as an issue with a preference to separate entrances. These are the concerns other local farmers have raised in so far as it relates to their farms and potential for impacts on their herds.

Notwithstanding that the locational or business need for a poultry farm has not been established and that the issue of alternative sites is a moot point, the consideration of alternatives have not been undertaken in an objective manner with sufficient scientific data to support the findings. The Directive requires a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment. This is not limited to alternative sites. The test for alternatives has not been met. Reasonable alternatives should have included sites located adjacent to or in close proximity to the processing units in Shercock given the reliance on transportation to and from there as evidenced in the documentation. The absence of a business plan also supports the view of the undersigned that no alternatives regarding scale, size, use of technology and innovative farm practices were considered in any meaningful way. The applicant cites the 'Farm to Fork Strategy' yet he fails to demonstrate how the principles of this EU strategy have been applied to this development – rearing of battery chickens on an intensive scale. Below is an extract that this strategy seeks to achieve and which this application fails to establish: -

The Farm to Fork Strategy aims to accelerate our transition to a sustainable food system that should:

- have a neutral or positive environmental impact
- help to mitigate climate change and adapt to its impacts
- reverse the loss of biodiversity
- ensure food security, nutrition and public health, making sure that everyone has access to sufficient, safe, nutritious, sustainable food
- preserve affordability of food while generating fairer economic returns, fostering competitiveness of the EU supply sector and promoting fair trade

There has been no assessment of the vulnerability of the project itself to future changes and its capacity to adapt to the impact of climate change.

In respect of 'land' the EIAR provides no details of nutrient management plans which would be considered to be an essential component in considering soil, water, biodiversity etc. and the interaction of these components whilst also establishing a baseline scenario.

### **Traffic Hazard**

This reason for refusal cited previously by the Board remains outstanding. The applicant is now proposing to have a 'no-left' turn at the entrance of the farm. The planning authority conditioned the following

"Access to the proposed poultry houses shall be only by the route detailed in Figure 6.1 in Appendix No. 23 of the EIAR received on 17<sup>th</sup> December 2021. This access route shall be utilised for both the construction and operation of the poultry houses".

**Reason:** In the interests of traffic safety.

This condition is non-enforceable and therefore the planning authority has erred in law. Access from the site is onto a two-way public road and where traffic turns left (the most convenient and direct route to the R-169) there is no mechanism to enforce this condition. Conditions imposed should be reasonable, precise, specific, enforceable and necessary. Therefore, the previous reason for refusal has not been addressed and cannot be addressed given the sub-standard width and alignment of the local road serving the site and also the significant lack of sightlines at the junctions onto the R-169. Further to this the use of the local roads via Styfan's cross is also seriously sub-standard and in conjunction with the existing steel works and primary school traffic would represent a serious public safety issue, where there is no public footpath.

The insertion of a non-enforceable condition is unreasonable and does not address the prima facie reason for refusal cited by the Board previously. The planning authority is creating a situation where there will be no recourse for the public who have raised legitimate concerns and which have not been reasonably considered.

### **Previous concerns set out in the Inspector's report**

The Inspector previously raised concerns as follows in her report (paragraphs cited refer to Inspector's report), which again have failed to be addressed in the EIAR as follows:-

- Paragraph 9.2.5 - In addition the proposal, which involves intensive production of housed animals with associated air emissions, has not been placed in the context of Ireland's drive to achieve reductions in air emissions.
- Paragraph 9.2.6 - Although this is a rural area, in which a development of the type proposed could potentially be accommodated, the proposed development has not been shown to be acceptable in principle.

### **Justifiable need for a poultry farm at this location**

- The locational need for a poultry farm at this site has not been demonstrated given in particular the effects of climate change and the circular economy. The applicant has clearly set out that the chickens are to be transported to and from Shercock which the EIAr indicates is c. 35 kilometres from the site. Manor Farms processing plant in Shercock is c. 42 kilometres away using the shortest route which comprises of many inadequate local roads e.g. traffic via Stifyans cross where there is a school with a poor footpath network for local residents. In essence, the young chicks, are being transported from Shercock to Dunleer for a 5-6 week period only to be transported back to Shercock by HGV to be slaughtered and processed. Furthermore, all poultry feed (c.175 HGV deliveries/annum) is to be transported from Manor Farms feed mill located in Shercock. In addition, the EIAr sets out that the manure is to be transported to composting facilities at Carburry, Co. Kildare and Gorey, Co. Wexford, distances of c. 78km and c. 173km respectively from the site at Rathescar. The level of traffic movements is unsustainable and demonstrates the lack of justifiable need for a poultry farm of the scale proposed at this location. In addition to this, the air emissions and carbon footprint arising from traffic movements have not been considered in the EIAr and also run counter to the principles and targets set out in the EU 'Farm to Fork Strategy'.

### **Planning Authority's planning reports**

The planning reports do not set out what the main significant direct and indirect effects of the proposed development on the environment are, and how they will be mitigated. Residual impacts are not mentioned. It is accepted that this would have been a difficult task given the lack of technical data provided to support the narrative that there will be no significant effects. However, the EIA Directive provides that the competent authority is required to identify, describe, assess the impacts and how these might be mitigated. It, therefore, falls to the Board to present these findings and provide reasoned conclusions in this regard.

The Louth County Development Plan (CDP) clearly sets out in section 13.13.11.7 to assist in the assessment of planning applications for agricultural buildings and in particular new farm enterprises on an undeveloped landholding, a business plan setting out the requirement for the development will be required. This was not submitted with the application and given the level of inconsistent information submitted, is particularly concerning and is considered to be a contravention of the provisions of the CDP. Transport costs associated with the proposal will be significant, particularly in light of current rising fuel prices, unless the manure is to be spread on lands. This raises significant concerns regarding how condition 5 in the notification of the grant of permission is to be enforced. This condition sets out that

"all organic fertiliser generated by the proposed development shall be disposed of in accordance with the details included with the application received on 17<sup>th</sup> December 2021 and 4<sup>th</sup> March 2022 and in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017. No landspreading of organic fertiliser generated from the operation of the proposed poultry houses shall take place."

This condition in addition to conditions 6 and 7 are considered unenforceable. The condition on the face of it would suggest there is no landspreading however refers to the 2017 Regulations which relate to landspreading and would therefore infer there will be landspreading. The applicant currently landspreads poultry litter. How is it to be determined where the organic fertiliser that is to be spread originates from? This will require the public to constantly seek details from the EPA or the Planning Authority regarding same. Essentially, this is unreasonable and effectively means that the applicant will have circumvented the planning process including addressing the provisions of the Water Framework Directive to get a grant of permission.

The Planning authority has provided no details of how future monitoring will be managed or controlled. Further to this, the documentation sets out that the applicant, currently adheres to good farming practices. This is questionable, as it evidenced on OSI aerial imagery available on Geohive Map viewer, there has been stock piling of chicken manure along the watercourses in direct contravention of the Water Framework Directive and Regulations regarding Good Agricultural Practice for the Protection of Waters. Significant tracts of hedgerows and removal of traditional field patterns have occurred over the years from 2013 to the present day as evidenced on Geohive maps perhaps explaining the absence of biodiversity cited in the EIAr. The justification for removal of extensive mature hedgerows appears to be that he intensively farms. Such a statement demonstrates no regard for flora and fauna or providing compensatory biodiversity measures. Further to this, access roads have been constructed without any planning permission and are such that should have been considered within the EIAr as they pertain to this section of the applicant's landholding. There is essentially an alternative access route to and from this site.





## Conclusion

The previous reasons for the Board's refusal remain relevant and have not been addressed. It is particularly concerning that the Planning Authority is relying on non-enforceable conditions to regulate this development with no recourse for the nearby residents who will have to live with this development. The conditions are 'ultra vires' and therefore are unlawful.

The applicant has carried out works on his lands which clearly require permission and which should have formed part of the EIA process when determining what the direct and indirect effects on the environment may be. The details regarding alternatives sites, does not include 325Ha of the landholding, which the applicant states he farms. The locations of the landholdings submitted are just about discernible and the reasons for discounting some sites are spurious having regard to the final location chosen. The test of the EIA Directive and alternatives has not been met.

It is requested that the Board refuse this development for the same reasons it previously refused the development as the EIAR remains wholly inadequate and the conditions cited by the Planning Authority are not enforceable.

Importantly, the principle of a poultry farm at this location has not been established and the proposal contravenes section 13.13.11.7 of the Louth County Development Plan regarding the provision of a business plan setting out the requirement for the development. The proposal does not adhere to the principles of the EU 'Farm to Fork Strategy' and the targets set for the agricultural sector.

It is respectfully requested that the proposed development be refused.

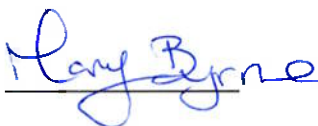
Yours sincerely



Sean Johnston on behalf of the Johnston Family



Michael Johnston



Mary and Noel Byrne



**LOUTH COUNTY COUNCIL**

Town Hall, Crowe Street, Dundalk, County Louth A91 W20C  
Tel: 042/9335457

**PLANNING AND DEVELOPMENT ACT, 2000 (as amended)**

**Date:** 31/01/2022

**TO:** Johnston Family  
c/o Sean Johnston  
Puckstown  
Dunleer  
Co. Louth

**ACKNOWLEDGEMENT OF SUBMISSION**

**Applicant:** Michael Callan

**Description of Development:** permission to construct 4 no. poultry houses together with roofed/enclosed service yard, 1 no. office, 1 no. generator store and 1 no. bin/general purpose store, along with all ancillary structures (to include gas storage tanks, 3 no. soiled water tanks, 4 no. meal storage bins and the provision of an on-site waste water treatment system and percolation area) and associated site works (to include new/upgraded site entrance and internal laneway, and provision for 4 no. passing bays on the local public road) associated with the development. This application relates to a development which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) have been submitted with this planning application

**Location of Development:** Rathescar Middle/Gunstown/Whiteriver Dunleer Co Louth.

**Date Application Received:** 17/12/2021

**Type of Application:** PERMISSION

A Chara

I wish to acknowledge receipt of your written submission/observation in relation to the above application.

The Planning Authority will take this submission/observation into consideration before a decision is made on the application. You will be notified of the decision as soon as it is made together with details of your right of appeal to An Bord Pleanala.

The application and all plans, etc. submitted with it are available for inspection at this office from 9 a.m. to 5 p.m. Monday to Friday. Please quote the planning reference number (211499) in any future correspondence or enquiry.

Mise, le meas

  
\_\_\_\_\_  
**Patricia Agnew**  
**Planning Office**

**PLANNING AND DEVELOPMENT REGULATIONS, 2006 (as amended)**

**ACKNOWLEDGEMENT OF RECEIPT OF SUBMISSION OR OBSERVATION ON A  
PLANNING APPLICATION**

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PRODUCE THIS ACKNOWLEDGEMENT TO AN BORD PLEANALA IF  
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**LOUTH COUNTY COUNCIL**

**PLANNING APPLICATION REFERENCE NO. 21 1499**

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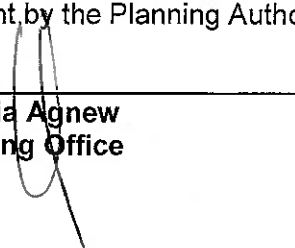
A submission/observation in writing has been received from

The Johnston Family c/o Sean Johnston, Puckstown, Dunleer, co. Louth.

on **28<sup>th</sup> January 2022** in relation to the above application.

The appropriate fee of **€20.00** has been paid.

The submission/observation is in accordance with the appropriate provisions of the Planning and Development Regulations, 2006 (as amended), and will be taken into account by the Planning Authority in its determination of the Planning Application.

  
**Patricia Agnew  
Planning Office**

An Comhairle Ombudsman  
Pleanála

**31 JAN 2022**

**PLANNING AUTHORITY  
STAMP  
DATE: 31/01/2022**

**LOUTH COUNTY COUNCIL**

Town Hall, Crowe Street, Dundalk, County Louth A91 W20C  
Tel: 042/9335457

**PLANNING AND DEVELOPMENT ACT, 2000 (as amended)**

**Date:** 28/01/2022

**TO:** Michael Johnston  
Dunleer  
Co. Louth

**ACKNOWLEDGEMENT OF SUBMISSION**

**Applicant:** Michael Callan

**Description of Development:** permission to construct 4 no. poultry houses together with roofed/enclosed service yard, 1 no. office, 1 no. generator store and 1 no. bin/general purpose store, along with all ancillary structures (to include gas storage tanks, 3 no. soiled water tanks, 4 no. meal storage bins and the provision of an on-site waste water treatment system and percolation area) and associated site works (to include new/upgraded site entrance and internal laneway, and provision for 4 no. passing bays on the local public road) associated with the development. This application relates to a development which is for the purposes of an activity requiring a Licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) have been submitted with this planning application

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A submission/observation in writing has been received from

Michael Johnston, Mosstown Dunleer, Co. Louth

on **27<sup>th</sup> January 2022** in relation to the above application.

The appropriate fee of **€20.00** has been paid.

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**Planning Office**

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**PLANNING AND DEVELOPMENT ACT, 2000 (as amended)**

**Date:** 28/01/2022

**TO:** Mary & Noel Byrne  
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