



An
Bord
Pleanála

Inspector's Report

ABP-319883-24

Development

The construction of a slatted cubicle shed with underground storage tanks together with and all other associated site works.

Location

Tullowglass, Jenkinstown, Co. Kilkenny.

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

2460008

Applicant(s)

Eamonn and Tom Phelan

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellant(s)

Peter Sweetman

Observer(s)

None

Date of Site Inspection

7th November 2024

Inspector

Emer Doyle

1.0 Site Location and Description

- 1.1. The subject with a stated area of 1.25 hectares is located in the rural townland of Tullowglass, Jenkinstown, approximately 8km north of Kilkenny City and 6km south of Ballyragget. The boundary of Jenkinstown Park is located approximately 100m east of the site. The site is situated at the end of a cul de sac public road, LT 18241, approximately 1km east of its junction with the N77.
- 1.2. The site consists of a farm yard complex of agricultural buildings together with a dwelling house. An existing slatted shed is built over a minor watercourse which is piped under the shed. The floor area of existing agricultural sheds within this farm yard is stated to be 1,791m². The site forms part of a larger landholding of 165 acres.
- 1.3. Development in the area consists of scattered rural housing and agricultural uses.

2.0 Proposed Development

- 2.1. The proposed development as outlined within the public notices comprises permission to construct a cubicle shed with underground effluent storage tanks and associated works.
- 2.2. The cubicle shed has a floor area of 321m² and height of 8.1m.
- 2.3. The proposed effluent storage tanks have an area of c. 477m³.
- 2.4. The proposed cubicle shed is adjacent to a surface watercourse. It is noted that an adjacent slated shed is built over this watercourse which is piped under the shed and it is proposed to extend this drain under the proposed shed. It is also proposed to remove c. 30m of hedgerow adjacent to the proposed shed at the site boundary.
- 2.5. Further information was submitted to the Planning Authority dated the 5th of April 2024 which provided for the following:
 - A Natura Impact Statement which was subsequently readvertised.
 - Diversion of the existing drain to the east side of the mature hedgerow.
 - Installation of a new sump with a pump and pipeline to redirect soiled water to existing slatted tanks.

- Enlargement of the proposed effluent tanks beneath the slatted shed to accommodate excess soiled water. The revised drawings provide for effluent tanks of c. 522m³.
- A commitment to conduct instream works when the watercourse is dry.
- Retention of the majority of existing hedgerow. Removal will be limited to what is essential for accommodating the drain diversion and work will take place outside of the nesting season.
- Construction Management Plan.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By Order dated 30th May 2024, Kilkenny County Council issued a Notification of decision to grant planning permission subject to 6 No. conditions. The conditions were of a standard nature for the type of development proposed.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The first report required further Information in relation to diversion of a watercourse, hedgerow removal and appropriate assessment.
- Second report considers that the matters raised have been addressed and recommends permission subject to conditions.

3.2.2. Other Technical Reports

- Area Engineer: No objection subject to conditions.

3.3. Prescribed Bodies

- Inland Fisheries Ireland (IFI): Notes that proposed slatted cubicle shed is directly adjacent to a surface watercourse. The applicant's plans include the ducting of this

watercourse. IFI is concerned with the proximity of the proposed development to the watercourse and the applicant's intention to cover this watercourse. In addition to the removal of aquatic habitat and the risk posed by the proximity of the proposed development to an aquatic pathway, the applicant's proposals would curtail the capacity to identify sources and/or pathways for potential pollution to the Dinan catchment. IFI request that before any development can proceed that the applicant submits a revised plans / methodology to protect the integrity of the existing watercourse. These should include mitigation measures to prevent any discharge during the construction and operational phases of the development. IFI also requests that the applicant's plans include the proper interception and containment of any potential soiled water and/or contaminated effluent to prevent it from entering this watercourse.

Following proposals submitted in the Further Information Request, a second report was submitted as follows:

Inland Fisheries Ireland is satisfied that the applicant may divert the stream in accordance with the plans provided to allow the construction of the proposed buildings. These diversion works should take place during the period 1st July to 30th September or when the watercourse is dry. The applicant must include mitigation measures to prevent any discharge to waters during the diversion works. These should be included in the final Construction Environment Management Plan (CEMP) provided by the applicant.

Transport Infrastructure Ireland: No observations.

3.4. Third Party Observations

- 3.4.1. The PA received one third-party submission during the course of their determination from Mr. Peter Sweetman (and on behalf of Wild Ireland Defence). The submitter outlines the legal tasks of a PA when dealing with an application of this type and states that the application requires appropriate assessment.

4.0 Planning History

4.1. PA Reg. Ref. 04/1076

Permission granted for extension to milking parlour and for collecting yard facilities.

PA Reg. Ref. 96/190

Permission granted for slatted cubicle shed and all associated site works.

5.0 Policy Context

National Policy Objective 23

- 5.1.1. Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.

5.2. Development Plan

- 5.2.1. The operative plan for the area is the Kilkenny County Council Development Plan 2021-2027.

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

Strategic Aim:

To manage rural change and guide development to strengthen the rural economy and community through the network of towns and villages, ensuring vibrant, sustainable and resilient rural areas whilst conserving and sustainably managing our environment and heritage.

Policy:

- Promote the sustainable development of rural areas.
- Protect the quality and character of rural areas.
- Protect the quality of the environment, including the prevention, limitation, abatement and/or reduction of environmental pollution and the protection of waters, groundwater and the atmosphere.

5.2.2. **S.I. No. 113/2022 - European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022**

The European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 set parameters for farmyard and nutrient management and the distances for spreading fertiliser from water sources to prevent water pollution.

5.2.3. **Water Framework Directive**

The European Union Water Framework Directive aims to improve water quality and applies to all water bodies. The Directive runs in six-year cycles and is currently in its third cycle 2022 to 2027. Member States are required to achieve 'good' status in all waters and must ensure that status does not deteriorate. The Directive has been given effect by the Surface Water and Groundwater Regulations.

5.3. **Natural Heritage Designations**

- 5.3.1. The appeal site is not located on or within proximity to any designated Natura 2000 site(s) or Natural Heritage Area(s). The River Barrow and Nore SAC (Site Code 002162) being the nearest European site is approximately 1.4km to the east of the subject site. The nearest SPA is the River Nore SPA (Site Code 004233) c. 2.6km to the west of the site.

5.4. EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows:
- We are unable to find any meaningful mitigation measures in the Natura Impact Statement.
 - The fact that the Natura Impact Statement and the Decision fail to mention the spreading of slurry is a definite lacunae.
 - The Planning Authority failed to carry out its obligations in assessing the application.

6.2. Applicant Response

- 6.2.1. The response submitted by the applicant can be summarised as follows:
- Slurry spreading on our farm will follow the farm nutrient management plan for the farm.
 - We are availing of EU Derogation which allows us to farm above the 170kgs of Organic N per Hectare threshold.
 - Our proposed development is in line with the objectives of the Nitrates Action Plan/ EU Derogation to protect, maintain and improve water quality.
 - Attached to the appeal are our most recent EU Derogation Plan and the terms and conditions of the Nitrates Derogation 2024 in which the legal requirements in relation to manure and slurry spreading have been highlighted.

6.3. Planning Authority Response

6.3.1. The response submitted by the Planning Authority can be summarised as follows:

- It is noted that the appeal relates to the land-spreading of slurry which is stated to be a lacunae in the context of the assessment of potential impacts on Natura 2000 site/s.
- In this regard, the following should be taken into account in the assessment of this appeal: It is a condition of this permission that the proposed development is designed and carried out in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended. Furthermore, it is noted that the land-spreading of slurry/fertilisers is regulated under the European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended. The regulations contain specific measures to protect surface waters and groundwater from nutrient pollution arising from agricultural sources.
- It should be further noted that the Nitrates Action Programme is an integral part of Ireland's programme of measures to protect water from agricultural pressures. The Planning Authority has in its assessment of the application adhered to the current regulatory process and assessed the development as proposed and with due consideration of the implementation of the Regulations. It is the Planning Authorities view that it is the programme developed by the EPA for the control of landspreading that should undergo AA screening and where required a stage 2 Appropriate Assessment if required.
- Notwithstanding this, the Board should note that the carrying out of land-spreading does not form part of this planning application.

6.4. Observations

- None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the appeal submission received in relation to the appeal, the reports of the planning authority, having inspected the site and having regard to relevant local, regional and national policies and guidance, I consider that the main issues in this appeal to be considered are as follows:

- Principle of Development
- Nature of Project to be assessed
- Water Framework Directive
- Appropriate Assessment

7.2. Principle of Development

7.2.1. Having regard to the nature of the development within an existing farmyard together with the height and scale of the proposed development, I am satisfied that the development will not result in an adverse impact on the visual or scenic amenity of the area.

7.2.2. Taken the above into consideration, I am satisfied that the continuance, improvement and expansion of this agricultural activity is a realistic expectation. It is in this context that I consider the further development of agricultural structures in what appears to be a modernisation of an existing use in order to comply with prevailing farming practices to be acceptable in principle.

7.3. Nature of Project to be assessed

7.3.1. Matters are raised in the appeal in relation to slurry spreading and it is stated that 'the fact that the Natura Impact Statement and the Decision failed to mention the spreading of slurry is a definite lacunae'.

7.3.2. At the outset, for the purposes of clarity, the Board should note that landspreading does not form part of this application and such process is regulated under the European Union (Good Agricultural Practice for Protection of Waters) Regulations,

as amended. The regulations contain specific measures to protect surface waters and groundwater from nutrient pollution arising from agricultural sources. This includes, inter alia, no land spreading within 5-10 metres of a watercourse following the opening of the spreading period. I note that an Appropriate Assessment was completed as part of Ireland's fifth Nitrates Action Programme (NAP) 2022-2025, which is given effect by the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022, and concluded that the programme would not adversely affect the integrity of any European Site.

- 7.3.3. The proposed development includes the construction of a slatted cubicle shed with underground storage tanks. I refer the Board to the applicant's response which states that slurry spreading on the farm will follow the farm nutrient management plan designed for the farm and the construction of the proposed development will allow us 'to spread livestock manures at the most appropriate parts of the grass growing season eliminating any potential losses to waters' in line with the objectives of the Nitrates Action Plan.

7.4. Water Framework Directive (WFD)

- 7.4.1. The WFD is implemented through River Basin Management Plans (RBMPs) and the subject lands are located within the Nore Catchment. The site of the proposed development is located in the catchment of the Dinan (Main Channel) -020. The current Ecological Status of this river is Moderate and it is At Risk of not meeting its Water Framework Directive objectives. In examining the EPA's Nore Catchment Report, (May 2024), I note that agriculture is listed as a 'significant pressure' type category for at risk waterbodies only including the Dinan (Main Channel)-020.
- 7.4.2. Given the nature and extent of works proposed and in noting to the Board that landspreading does not form part of this application and given the proposals to direct all soiled waters to a storage tank, I am satisfied that the proposal will not pose a risk to ground or surface waters. I note that the applicant has consulted with Inland Fisheries Ireland in relation to the diversion of an existing watercourse on the site and they are satisfied that with this proposal subject to appropriate conditions including that works take place when the watercourse is dry and the applicant puts mitigation measures in place to prevent any discharge to waters during the diversion

works. I suggest that the Board attach these conditions in addition to standard conditions in regard to the treatment of surface waters, in the event that the Board is minded to grant permission.

7.5. Appropriate Assessment

Stage 1- Screening Determination for Appropriate Assessment

- 7.5.1. Having carried out Appropriate Assessment screening (Stage 1) of the project (included in Appendix 2 of this report), it has been determined that likely significant effects on the River Barrow and River Nore SAC (Site Code 002162) and the River Nore SPA (Site Code 004233) cannot be excluded in view of the sites' conservation objectives and qualifying interests.
- 7.5.2. An Appropriate Assessment (Stage 2) is therefore required of the implications of the project on the qualifying interests of the SAC and SPA in light of their conservation objectives.
- 7.5.3. The possibility of likely significant effects on other European sites has been excluded on the basis of the nature and scale of the project, separation distance between the project, the appeal site, and any other European sites.

7.6. Stage 2 – Conclusion for Appropriate Assessment

- 7.7. The proposed development has been considered in light of the assessment requirements of Sections (177U and 177V) of the Planning and Development Act, 2000, as amended. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.
- 7.8. In carrying out an Appropriate Assessment (Stage 2) of the project (included in Appendix 2 of this report), I have assessed the implications of the project on the River Barrow and River Nore SAC (Site Code 002162) and the River Nore SPA (Site Code 004233) in view of the site's conservation objectives. I have had regard to the applicant's Natura Impact Statement and all other relevant documentation and submissions on the case file. I consider that the information included in the case file is adequate to allow the carrying out of an Appropriate Assessment.
- 7.9. Following the Appropriate Assessment (Stage 2), it has been concluded that the project, individually or in-combination with other plans or projects would not

adversely affect the integrity of the River Barrow and River Nore SAC (Site Code 002162) and the River Nore SPA (Site Code 004233) in view of the site's conservation objectives and qualifying interests.

7.9.1. This conclusion is based on:

- An assessment of all aspects of the project including proposed mitigation measures in relation to the conservation objectives of the River Barrow and River Nore SAC (Site Code 002162) and River Nore SPA (Site Code 004233)
- An assessment of in-combination effects with other plans and projects including historical and current plans and projects.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the River Barrow and River Nore SAC and the River Nore SPA.

8.0 Recommendation

8.1. Having regard to the foregoing it is recommended that permission be granted for the proposed development, subject to conditions.

Appropriate Assessment- Stage 1

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report in which the River Nore and River Barrow Special Area of Conservation (Site Code 002137) and the River Nore Special Protection Area (Site Code 004133) are the only European Sites in respect of which the proposed development has the potential to have a significant effect, and for which Appropriate Assessment is, therefore, required.

Appropriate Assessment- Stage 2

8.2. The Board considered the Appropriate Assessment Screening and Natura Impact Statement and associated documentation submitted, the mitigation measures contained therein, the submissions on file, and the Inspector's assessment. The Board carried out an appropriate assessment of the implications of the proposed

development for the affected European Sites, namely the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore SPA (Site Code: 004233) in view of the Conservation Objectives for the site. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment and to allow it to reach complete, precise and definite conclusions for appropriate assessment.

8.3. In completing the assessment, the Board considered, in particular, the following:

- (i) the likely direct and indirect impacts arising from the proposed development, both individually and in combination with other plans and projects,
- (ii) and the mitigation measures which are included as part of the current proposal.
- (iii) the conservation objectives for the European Sites

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out by the Inspector of the potential effects of the proposed development on the aforementioned European sites, having regard to the site's Conservation Objectives. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European sites, in view of the site's conservation objectives and that there is no reasonable scientific doubt as to the absence of such effects.

9.0 Reasons and Considerations

9.1. Having regard to the nature and scale of the proposed development within an established agricultural farmyard, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenity of the area and would be acceptable in terms of public health and environmental sustainability and would be supported by the relevant provisions of the Kilkenny County Council Development Plan 2021-2027. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by additional information received on the 5th of April 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 development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented in full.

Reason: To protect the integrity of European sites.

3. Site preparation and construction shall adhere to best practice and shall conform with the requirements of Inland Fisheries Ireland.

Reason: For the protection of the aquatic habitat.

4. 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) The arrangements for the collection and storage of slurry.

(c) 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.

5. 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.

6. 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, and

(b) all soiled waters shall be directed to a storage tank. Drainage details 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.

7. 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.

8. 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.

9. A minimum of 16 weeks storage shall be provided in the underground storage tank. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of environmental protection and public health.

10. Prior to the commencement of development, a Resource Waste Management Plan (RWMP), as set out in the Environmental Protection Agency's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021), shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management

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.

Emer Doyle

Inspector

23rd January 2025

Appendix 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP- 319883-24		
Proposed Development Summary	Construction of cubicle shed with underground effluent storage tanks and all associated site works.		
Development Address	Tullowglass, 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	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No	X		No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: Emer Doyle Date: 23rd January 2025

Appendix 2 Appropriate Assessment: Stage 1 & 2

Screening for Appropriate Assessment Screening Determination

Description of the project

I have considered the proposed development in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

The proposed development comprises the construction of a slatted cubicle unit with underground storage tanks together with all associated site works. Details were submitted in the Further Information Response to amend the application to provide for the diversion of an existing drain to the east of an existing hedgerow and to enlarge the proposed underground storage tanks. A detailed description is set out in Section 2 of my report.

At the outset, for the purposes of clarity, the Board should note that landspreading does not form part of this application and such process is regulated under the European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended. The regulations contain specific measures to protect surface waters and groundwater from nutrient pollution arising from agricultural sources. See Section 7.3 of my report in this regard.

The subject site is located c. 1.4km to the east of the River Barrow and Nore SPA (Site Code 002162) and 2.6km to the west of River Nore SPA (Site Code 004233). The next closest SAC's are Cullahill Mountain SAC (Site Code 000831) c. 14.4km and Spahill and Clonmanagh Mountain SAC (Site Code 000849) 13.8km northwest of the site.

I note that there is a minor watercourse on site which is connected downstream to the River Dinin, a tributary of the River Nore in the Ardalo area to the south and which is part of the River Barrow and Nore SAC. The main channel of the River Nore is also a designated SPA for Kingfisher.

The application has included an Appropriate Assessment Screening Report submitted at Further Information stage and a Natura Impact Statement. The Planning Authority undertook an appropriate assessment of the project. The applicant's NIS was relied upon, and it was concluded that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European sites, in view of their conservation objectives.

Submissions

Submissions to the Planning Authority were made by Inland Fisheries Ireland and one third party Mr. Peter Sweetman (and on behalf of Wild Ireland Defence)
The main concerns raised are as follows:

- We are unable to find any meaningful mitigation measures in the Natura Impact Statement.

- The test for Appropriate Assessment is: 'So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned'.
- The fact that the Natura Impact Statement and the Decision fail to mention the spreading of slurry is a definite lacunae. The Planning Authority failed to carry out its obligations in assessing the application.

Inland Fisheries Ireland (IFI)

I have summarised the submissions made by IFI in Section 3.3 of my report. In sum IFI were concerned regarding the proposal to cover an existing watercourse by piping it. It was considered that this would curtail the capacity to identify sources and/or pathways for potential pollution to the Dinan catchment. Revised proposals were submitted to the Planning Authority at Further Information Stage to divert the watercourse to the east of the existing hedgerow. The second IFI report to the Planning Authority considered that this was satisfactory subject to conditions.

Potential impact mechanisms from the project

Having regard to the proposed works, I consider that the following elements would potentially generate a source of impact which requires consideration in terms of potential effects on European sites:

- Surface water pollution during the construction and/or operation phases.

The site of the proposed development is not located in or immediately adjacent to a European Site. There is a hydrological link from a drainage channel on site to the Dinin River which in turn joins the River Barrow and Nore SAC at Ardaloo c. 3km to the south of the site and also the River Nore SPA.

With reference to EPA mapping, the appeal site is in the Nore Catchment and the Dinin River is at risk of not meeting its Water Framework Directive objective. In examining the EPA's Nore Catchment Report, (May 2024), I note that agriculture is listed as a 'significant pressure' type category for at risk waterbodies only including the Dinan (Main Channel)-020.

European Sites

The AA Screening Report describes the proposed development, its receiving environment and relevant European Sites in the zone of influence of the development. The proposed development 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 any European sites. Section 3.1 identifies four European sites within 15km of the project (Section 3, pg. 3). These are River Barrow and Nore SAC (site code: 002162), River Nore SPA (site code: 004233), Spahill and Clonmantagh SAC (site code: 000849), and Culahill Mountain SAC (site code: 000831). The Board are advised that a 15km radius is no longer considered an appropriate basis to identify European sites. There is no hydrological connection between the Spahill and

Clonmantagh SAC (site code: 000849), and Culahill Mountain SAC (site code: 000831). The Screening report rules out significant effects on these two sites due to the absence of any hydrological connection with the project. I consider that the likelihood of any significant effect of the project on these two sites can be reasonably excluded at this preliminary examination stage.

It is considered that given the close proximity to a receiving drainage channel and in an unmanaged situation, there is a possibility of run-off reaching the SAC through the watercourse as well as groundwater inputs. It concludes that there is therefore a clear link between the first two sites (River Barrow and Nore SAC and River Nore SPA) and a potential for impacts.

Having regard to the characteristics of the project in terms of the site's features and location, and the project's scale of works, I consider the following impacts and effect mechanisms require examination for implications for a likely significant effect on two European sites, River Barrow and Nore SAC (site code: 002162), River Nore SPA (site code: 004233)

Deterioration of water quality as a result of sediment, pollution during construction phase.
Deterioration of water quality as a result of pollutants, dust, sediment, oil/hydrocarbon, hard surface run off etc., during operation phase.

Table 1 European Sites at risk from impacts of the proposed project [example]

Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
Surface water pollution	Impact via a hydrological pathway	River Barrow and River Nore SAC (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 (<i>Glauco-Puccinellietalia maritima</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260]

			<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>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 (Twait Shad) [1103]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Lutra lutra (Otter) [1355]</p> <p>Trichomanes speciosum</p>	
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			(Killarney Fern) [1421]	
As above	As above	River Nore SPA (Site Code 004233)	Kingfisher (Alcedo atthis) [A229]	
Table 2A: Could the project undermine the conservation objectives 'alone'				
European Site and qualifying feature	Conservation objective (summary)	Could the conservation objectives be undermined (Y/N)?		
		Construction Surface water pollution	Operational Surface water pollution	
River Barrow and River Nore SAC (002162)	https://www.npws.ie/protected-sites/sac/002162			
Estuaries	To maintain the favourable conservation condition	N	N	
Mudflats and sandflats not covered by seawater at low tide	To maintain the favourable conservation condition	N	N	
Reefs	Not stated	N	N	
Salicornia and other annuals colonising mud and sand	To maintain the favourable conservation condition	N	N	

Atlantic salt meadows	To restore the favourable conservation condition	N	N	
Mediterranean salt meadows	To restore the favourable conservation condition	N	N	
Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation	To maintain the favourable conservation condition	N	N	
European dry heaths	To maintain the favourable conservation condition	N	N	
Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels	To maintain the favourable conservation condition	N	N	
Petrifying springs with tufa formation	To maintain the favourable conservation condition	N	N	
Old sessile oak woods with Ilex and Blechnum in the British Isles	To restore the favourable conservation condition	N	N	
Alluvial forests with Alnus glutinosa and	To restore the favourable conservation condition	N	N	

Fraxinus excelsior				
Desmoulin's Whorl Snail	To maintain the favourable conservation condition	N	N	
Freshwater Pearl Mussel	To restore the favourable conservation condition	N	N	
Nore freshwater pearl mussel	To restore the favourable conservation condition	N	N	
White-clawed Crayfish	To maintain the favourable conservation condition	Y	Y	
Sea Lamprey	To restore the favourable conservation condition	Y	Y	
Brook Lamprey	To restore the favourable conservation condition	Y	Y	
River Lamprey	To restore the favourable conservation condition	Y	Y	
Twaite Shad	To restore the favourable conservation condition	Y	Y	
Salmon	To restore the favourable conservation condition	Y	Y	
Otter	To restore the favourable conservation condition	Y	Y	
Killarney Fern	To maintain the favourable conservation condition	N	N	

European Site and qualifying feature	Conservation objective (summary)	Could the conservation objectives be undermined (Y/N)?		
		Construction Surface water pollution	Operational Surface water pollution	
River Nore SPA 004233	https://www.npws.ie/protected-sites/spa/004233			
Kingfisher (Alcedo atthis) [A229]	To maintain the favourable conservation condition of Kingfisher in the River Nore.	Y	Y	

Appropriate Assessment: Stage 1 – Screening Determination

In accordance with section 177U(4) of the Planning and Development Act 2000 as amended, and on the basis of objective information, having carried out Appropriate Assessment screening (Stage 1) of the project, it has been determined that likely significant effects on the River Barrow and River Nore SAC (Site Code: 002162) and the River Nore SPA (Site Code 004233) cannot be excluded in view of the site's conservation objectives and qualifying interests.

An Appropriate Assessment (Stage 2) is therefore required of the implications of the project on the qualifying interests of the SAC and SPA in light of their conservation objectives.

The possibility of likely significant effects on other European sites has been excluded on the basis of the nature and scale of the project, separation distances between the appeal site and any other European sites.

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

Appropriate Assessment

Stage 2

Aspects of the Proposed Development

Potential impacts could arise in particular from any deterioration in water quality as a result of the uncontrolled or unmitigated release of pollutants, including sediments, invasive species to the drains and streams that are hydrologically connect the site to the River Nore and River Barrow. This in turn could have adverse impacts on qualifying interests.

Potential Impacts

The site works and the construction of the cubicle shed and underground storage tank will involve the excavation of soil and the pouring of concrete for foundations and other hard surfaces. An increase in siltation and pollution of water with hydrocarbons, cement and concrete could have a significant negative impacts on the fish and invertebrate populations of the River Barrow and River Nore.

Any pollution of groundwater could also lead to impacts on the SAC/ SPA.

Potential for the release of effluent (e.g. stray fodder and spilt slurry) generated by the proposed development via surface water and to water quality sensitive habitats.

The most likely source of pollution during the operation is oil from farm machinery and/ or silt contaminated surface water run-off from the site.

Having regard to the limited scale of the proposed development and the enclosed nature of the development site, and the distance between the site and the SAC/SPA, I consider that the scale of the impacts identified above would be likely to be relatively low.

Mitigation Measures

The proposed development will be in very close proximity to the drainage ditch to the east of the site. It was originally intended to pipe this watercourse, however in response to a submission made by Inland Fisheries Ireland (IFI) during the course of the application, it is now intended to divert this watercourse to the east of an existing hedgerow. Section 4.3 of the NIS sets out that 'this should be done by excavating the channel from north to south when there is no water flow (July-September), allowing vegetation to colonise it naturally before water flow recommences and with any other details required by IFI.

It is proposed to install a silt fence along the drainage channel downstream of the excavation works and kept in position for at least a month after flow begins.

It is also proposed to install a linear reedbed planted on the western side of the stream south of the diversion and willow woodland at the eastern side of the new cubicle house.

I note that Inland Fisheries Ireland consider that this approach is satisfactory and have recommended that the diversion works should take place during the period 1st July to 30th September or when the watercourse is dry, together with mitigation measures to prevent any discharge to waters during the diversion works.

I am satisfied that these measures can be implemented via condition. The stream diversion will be undertaken in advance of any excavation works for the proposed shed during a period of low/ no water flow.

The diversion of the stream will also reduce the risk of surface water contamination during construction and operation.

Overall, together with application of standard good construction practice, I am generally satisfied that the mitigation measures are proportionate to the scale of the proposed agricultural building and address the identified risks from the construction and operation of the proposed slatted shed development.

The increased storage capacity of animal manure and improved surface water drainage will improve overall surface water from the farmyard and reaching surface water features such as the adjacent drainage channel.

I note the observations of Mr. Sweetman regarding mitigation measures, however I consider that any impacts generated during the construction of the proposed agricultural building and storage tanks would be temporary in nature, of low impact and can be managed effectively by interrupting the source impacts.

Should the Board be minded to grant permission for the proposed development, I recommend the inclusion of standard drainage and agricultural conditions. See conditions Nos. 4, 6, 7, 8 and 9 in my report in this regard. Conditions 2 and 3 attached to my report require the mitigation measures outlined in the Natura Impact Statement to be carried out in full and for site preparation and construction to adhere to best practice and to conform with the requirements of Inland Fisheries Ireland.

In-combination effects

Having regard to the appeal file, I am satisfied that there is no available evidence in respect of any plans or projects that are proposed/ permitted which could impact with the proposed development.

As previously noted, landspreading does not form part of this application and such process is regulated under the European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended. The current agricultural activities on the farm include the spreading of animal manures in line with the farm nutrient plan as submitted with the application. The proposed development does not provide for a significant change to

farming operations and therefore no significant change to current baseline in terms of nutrient balance is anticipated.

I am satisfied that taking account of the current baseline, the proposed mitigation measures and standard drainage and agricultural conditions, the proposed development would not act in combination with any other projects such to result in any significant effects on the River Barrow and Nore SAC and the River Nore SPA or any of the qualifying interests for which these sites are designated, having regard to their conservation objectives.

Table 2B: Could the project undermine the conservation objectives in combination with other plans or projects?

European Site and qualifying feature	Conservation objective	Could the conservation objectives be undermined (Y/N)?		
		Construction Surface water pollution	Operation Surface water pollution	
River Barrow and River Nore SAC (002162)	www.npws.ie/protected-sites/sac/002162	N	N	
River Nore SPA (004233)	River Nore SPA National Parks & Wildlife Service	N	N	

Appropriate Assessment: Stage 2 – Conclusion

The project has been considered in light of the assessment requirements of sections 177U and 177V of the Planning and Development Act 2000, as amended. On the basis of objective information, I have assessed the implications of the project on the River Barrow and River Nore SAC (Site Code 002162) and the River Nore SPA (Site Code 004233) in view of the site's conservation objectives. I have had regard to the applicant's Natura

Impact Statement and all other relevant documentation and submissions on the case file. I consider that the information included in the case file is adequate to allow the carrying out of an Appropriate Assessment.

Following the Appropriate Assessment (Stage 2), it has been concluded that the project, individually or in-combination with other plans or projects would not adversely affect the integrity of the River Barrow and River Nore SAC (Site Code 002162) and the River Nore SPA (Site Code 004233) in view of the site's conservation objectives and qualifying interests.

This conclusion is based on:

- An assessment of all aspects of the project including proposed mitigation measures in relation to the conservation objectives of the River Barrow and River Nore SAC (Site Code 002162) and River Nore SPA (Site Code 004233)
- An assessment of in-combination effects with other plans and projects including historical and current plans and projects.
- No reasonable scientific doubt as to the absence of adverse effects on the integrity of the River Barrow and River Nore SAC and the River Nore SPA.

Inspector: Emer Doyle

Date: 23rd January 2025