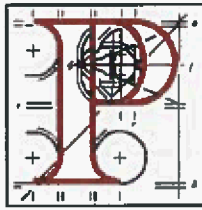


An Bord Pleanála



Inspector's Report

Reference: PL19.245044

P.A. Reference: 15/2

Title: Demolish 10 pig houses, construct 2 pig houses, extensions to 2 existing structures to form pig house no. 3, ancillary structures on site of existing pig farming enterprise.

Location: Ardra, Bracknagh, Co. Offaly

Applicant: Rosderra Farms

Appellant: Michael Hoey

Observers: None

PA: Offaly County Council

Type of Appeal: Third party against decision to grant

Decision: Permission granted with conditions

Date of Site Visit: 21st September 2015

Inspector: Philip Davis

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1. Introduction

This appeal is against the decision of the planning authority to grant permission for a reconstruction of an existing intensive pig farm in County Offaly. The grounds of appeal relate mostly to issues around appropriate assessment. The application was submitted with an EIS and is subject to an IPPC license from the EPA.

2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

Ardra, Bracknagh, Co. Offaly

Ardra is a townland on the west bank of the Figile River, just west of the small village of Bracknagh. The village sprawls from its small core at the junction of the R442/R419 for about 800 metres west to the bridge over the Figile. The landscape is flat, characterised by grazing land bounded by deep drainage ditches with overgrown hedgerows. The Figile, a tributary of the Barrow River, meanders through the landscape in an artificial channel, with raised flood banks on either side. There are five dwellings in Ardra, just west of the bridge over the Figile – the appeal site is in a field north of this little cluster of houses, within an area of drained fields next to the Figile channel.

The site and environs

The appeal site, with a site area given as 3.8 hectares, is an enclosed pig farming facility located just west of the Figile river, accessed via a track about 350 metres in length, which runs north from the R419 next to the bridge over the river. The land is occupied by 12 sheds, 10 of which are pig houses arranged in parallel, in addition to two large slurry tanks. The pig farm is active, although a number of the sheds are disused or partially derelict. The remainder of the land is uncultivated. A right of way runs through the site providing access to grazing lands to the north. A deep drainage ditch runs along the southern side of the site, draining into the Figile River.

The site is bounded on three sides by open grazing fields. The Figile is to the east, separated from the site by a raised bank. The nearest dwellings are the cluster in Ardra next to the bridge, just over about 300 metres to the south.

3. Proposal

The proposed development, as described on the site notice, is as follows:

- A. The demolition of 10 existing pig houses, and
B. The construction of 2 no. pig houses, and extensions to two no. existing structures to form pig house no. 3,

Together with all ancillary structures (to include meal storage bins, storage tanks, stormwater attenuation tank) and all associated site works on the site of an existing pig farming enterprise.

It is noted that the application relates to a development which is for the purposes of an activity requiring an Integrated Pollution Prevention and Control (IPPC) licence under part IV of the Environmental Protection Agency (Licensing) Regulations 1994 to 2013.

I note that the applicant states that while there will be a significant increase in the number of pigs on the farm (550 sow integrated farm increased to 1,250 sow specialised breeding farm), the levels of manure and other outputs will not increase, so it is claimed that the proposed development is not an intensification of the existing use – the new farm will be for rearing pigs to c.35kg before transfer to a specialised finishing farm.

4. Technical reports and other planning file correspondence

Planning application

The planning application was accompanied by a supporting letter, EIS, in addition to plans and specifications as received by the planning authority on the 2nd January 2015.

Following a further information request, an NIS for the scheme was submitted on the 7th April 2015.

External correspondence

EPA: A letter dated 19th January confirmed that the pig farm was issued an IPPC Licence (Register No: P0614-01) on the 21st November 2003 for the rearing of pigs.

An Taisce: Notes that the Figile is a tributary of the River Barrow SAC. The flood study is noted – and that the proposal represents a significant intensification.

Department of Arts, Heritage and the Gaeltacht: It states that a number of issues have not been adequately addressed in the EIS, notably the impact on the River Barrow and River Nore SAC of land-spreading, nitrogen deposition and flooding. It is considered that for this reason the AA screening document is considered deficient.

Inland Fisheries Ireland: In a response submitted after the issuance of a further information notice, key points within the EIS are highlighted with regard to landspreading and the impact on the Figile and Nore. It is submitted that the EIS is substandard in terms of required information on landspreading and the impact on waterways.

Waterways Ireland: Notes the proximity to the Figile and states that there would be no impingement on the Grand Canal.

Interdepartmental correspondence and reports

Environment and Water Services: States that there are no flood implications. Requests further information on a number of issues relating to drainage and storage of waste. Following the submission of the further information notice, it is stated that there is no comment on the NIS.

Roads Design: Refers to area engineer report.

Area Engineer: Notes that the site will be served by its own well so has no implications for water supply. Recommends that the file be passed to Environment and Barrow Drainage for comment on flood issues. Recommends a grant of permission subject to standard conditions.

Appropriate Assessment Screening Report: Notes that the Barrow and River Nore cSAC is 9.3 km downstream – 5.9 km directly distant. It is concluded that due to the possibility of impacts from landspreading, a stage 2 AA is required.

Planners Reports: The first planning report notes the comments and the results of the stage 1 screening for AA and recommended a request for further information in the form of a full NIS. This further information request was sent out on the 25th February 2015.

Following the submission of an NIS, a follow-on planners report states that it is considered that the proposed development is satisfactory and there is not considered to be a significant impact (subject to mitigation) on any Natura 2000 site. A grant of permission subject to 4 no. conditions was recommended.

5. Planning Context

Planning permissions – appeal site

The pig farm has three previous permissions – 88/272 for a 'pig production unit and new septic tank', and two retentions for pig related units – 92/205 and 95/275. These predate the existing EPA License for the site.

Planning permissions – general vicinity

None relevant on file.

Other permissions/licences

The existing pig farm operates under IPPC licence P0614-01. It is indicated by the EPA that this will require updating if the proposed works are implemented.

Development Plan

The site is in open countryside without any specific zoning or statutory designations. There are no policies within the County Development Plan specific to intensive farming facilities, but there are a number of general policies supporting the development of agriculture subject to relevant EU Directives (RDP-01 and RDO-04).

6. Decision

The planning authority decided to grant permission subject to 4 no. conditions. Conditions 2 and 3 sets out detailed requirements for water protection and protection during construction.

7. Grounds of Appeal

- It is submitted that the competent authority failed to carry out its statutory duty to carry out an assessment of the EIS and AA as required by the Directives.
- It is argued, in this regard, that the piggery has been operating illegally as there has been no assessment made of the impact of land-spreading on the River Barrow and River Nore SAC.
- Reference to a number of cases affecting the catchment of the Nore with regard to an argument that the proposed development represents project splitting and a failure to address cumulative impacts on the watershed.

8. Applicants response to appeal

- Before addressing the grounds of appeal, the applicant outlined the background and reasoning behind the proposed works. It is stated that it will provide direct employment of 4-6 people in the area, and is intended to provide for enhanced welfare, environmental compliance, efficiency and overall profitability, with no intensification in the level of authorised activity on the farm.

- It is submitted that the baseline chosen for the EIS is appropriate as it is an existing development and there will be no significant intensification.
- It is argued that the existing development is fully authorised.
- It is argued that the information submitted with regard to slurry and landspreading is sufficient as there is no significant increase in slurry over and above existing outputs.

9. Planning authority response

The planning authority did not respond to the grounds of appeal.

10. EPA response to Section 87 (EPA Act 1002) request

The EPA stated that Glanbia Farms Limited was issued an IPPC License (P0614-01) on the 21st November 2003 for the rearing of pigs. This was transferred to Rosderra Farms Ltd on the 12th January 2009 and was amended on the 29th January 2009, 15th April 2013 and 16th December 2013. The licence may need to be reviewed if permission is granted for the proposed works. The licensee has not yet applied for a determination in this regard.

The EIS is considered to address the key relevant points that come within the functions of the agency.

In response to specific questions from ABP, the Board is referred to guidelines on quantifying outputs from breeding units and integrated units. It is also confirmed that an Appropriate Assessment was not completed for licence application Reg. P0614-01.

11. Further correspondence

In response to a S.131 request from the Board to the applicant, he reiterates his appeal, emphasising that the basis of the appeal is that the existing operation is an unauthorised development on the basis of a failure by the relevant competent authority to carry out a full appropriate assessment and to assess its impact on the Barrow and Nore SAC (site code 002162).

It is also claimed that the current development level is on a flood plain and so is causing or is likely to cause environmental pollution.

It is argued that the application cannot be considered valid in the light of a failure to provide information on the locations and nature of the materials used in landspreading.

12. Assessment

Having inspected the site and reviewed the file documents, I consider it appropriate to assess the proposed development under the following headings:

- Legal issues
- Baseline
- Appropriate Assessment
- Principle of Development
- Ground and surface water
- Flora and fauna
- Landscape and visual impact
- Amenity Impacts (noise and odour)
- Economic and material assets
- Cultural heritage
- Flooding
- Traffic and other construction impacts
- Direct, indirect, and cumulative impacts
- Concluding remarks

Legal issues

The core of the appellants argument as I understand it is that the existing piggery is an unauthorised development, and it is implied (if not stated directly), that as it is subject to EIA and AA, then the Board should and cannot grant what is in effect a retention permission. The central argument is that the existing piggery has not been subject to a screening for AA under its existing licence. The EPA has confirmed this fact. There is little doubt that given its location directly beside a tributary of the River Barrow, less than 10 km upstream of the SAC, that a stage 2 screening would be required.

Notwithstanding this, I note that the existing piggery has a planning permission dating back to 1988, and while subsequent permissions were retention permissions, it is not clear that they required EIA. With regards to a requirement for AA under the planning acts, it would therefore appear that this is not a *de facto* application for retention, it is a permitted development. Since, having regard to Section 34(13) of the Act, any permission does not over-ride an applicant's responsibilities under other legislation, it would appear that the issue of unauthorised development (if it is such) applies to the IPPC licence, and as such the EPA is the competent authority to decide on this issue. I would conclude therefore that the existing piggery on the site is not an unauthorised development under the planning acts and this application is not for its retention.

Baseline

A key issue for concern expressed by both the appellant and a number of consultees relates to the lack of information on quantities of slurry

and landspreading. The level of information within the EIS is quite sparse and would be very substandard if this was a 'greenfield' application. The applicant has argued that while the proposal will increase the number of pigs on site (from 550 sows in an integrated unit to over a 1000 specialised breeding sows), the calculated quantity of slurry produced will not significantly change – it is calculated at 11,310m³, while the farm has a license already for the production of 11,330m³. In effect, it is argued that the baseline in terms of slurry (which is obviously the major environmental concern) will not change, and may reduce slightly.

From the figures available this would appear to be correct and reasonable. It is difficult in planning terms to address alterations to slurry levels, except insofar as the overall size of the proposed development is relevant. I will therefore assess the proposed development on the basis that it will not significantly increase slurry output and that the overall footprint of the pig farm will not change significantly. The Board may wish to consider a condition if granting permission such that the permission is granted on this basis and that any increase in output permitted by a revised IPPC License would require an additional planning permission.

Appropriate Assessment

There are two key aspects to the potential impact of the proposed development on the one Natura 2000 site in the vicinity – the Barrow and Nore SAC which is just under 10 km downriver. The site itself is on the historic floodplain of the Figile, and as such has an obvious potential for direct pollution; and the issue of landspreading of pig waste has the potential for cumulative overload of the local nutrient load. While the landspreading may take place over a wide area, it would most likely be in the Offaly/Kildare area, and so be within the Barrow catchment.

The NIS addresses the issue of there being any potential impact on the conservation objectives of the SAC – the conclusion being that subject to best practice in construction, management, and in landspreading, there should be no impact.

A number of observers to the original application (including the DoAHG and Fisheries Ireland) raised concerns about the lack of information about where landspreading would take place and the difficulties in coming to any conclusions on an AA without this information. The applicant has not provided any additional information on this. As is set out in the EIS and in the letter from the EPA, this is an issue for the IPPC licence application.

I noted during my site visit that the ditch to the north of the site appeared eutrophic and was choked with weeds. This does indicate some level of possible pollution from the existing facility, although other ditches in the area were similarly stagnant or otherwise showing signs

of excess nutrients so it would seem to be a general problem in the area.

With regard to those issues that come within the sphere of the planning acts, the key question is whether the facility will have a serious impact on the SAC, which is designated for the protection of a variety of freshwater species dependent on good quality water. From a locational point of view, the site is clearly sub-optimal, being so close to a river and within an area of historic flooding (although this likely pre-date engineering works to the river) and this would obviously be a significant concern if this was a greenfield application, or if it was intended to increase the intensity of operations on the site (while the number of pigs will increase significantly, the outputs of slurry will be the same). In order to ensure that a 50 or 100 year flood would not flood the pig houses or slurry stores, it is necessary (as proposed) to raise the floor levels. It would seem from the evidence available on file that this approach is satisfactory to ensure there is no reasonably foreseeable flood event that could result in a release of slurry or other materials to the river, and hence to the designated SAC.

In other respects, if the piggery is constructed and operated according to normal best practice, I am satisfied that these elements will not result in any negative impact on the conservation objectives of the Nore and Barrow cSAC. I would note that this does not preclude a judgement by the EPA that aspects of the proposed development that come within IPPC, specifically the spreading requirements on land, may not be acceptable.

Principle of Development

The site is in open countryside, without a specific zoning designation. It is close to the zoned village settlement of Bracknagh, but not within the town or close to any development zoning. The site has existing planning permissions for pig farming, on approximately the scale as that proposed (in terms of emissions and the physical extent of the buildings). There are a number of policy provisions within the Development Plan with regard to agricultural buildings and intensive uses, which provide a general set of objectives to favour such uses subject to the protection of amenities and minimising pollution.

Ground and surface water

The site itself is typical of the Midlands in being apparently on deep glacial till deposits over limestone, with some alluvial deposits from the adjoining river. The site overlies, and obtains water from, an aquifer designated as 'Locally Important Aquifer- Karstified' of 'moderate' vulnerability. Despite an apparently active well used by the farm, the EIS does not provide any site specific information about flows or quality, but as it is used by the farm it is presumably of adequate capacity and quality for agricultural use.

For protecting groundwater in the vicinity of the pigfarm, the EIS sets out a number of measures, primarily to prevent flow of manure from the pig sheds and storage tanks. The site will have in excess of 6 month storage capacity and will have a variety of systems set to DoAFM standards for collection and monitoring of manure flows.

The site is immediately next to the Figile River and has a deep drain along the southern boundary that flows to the river. It is built on what was historically an area prone to flooding, although there is no evidence of any flood impacting upon the site since it was built. It is proposed to raise the levels of the pig sheds above any likely 100 year event and to appropriately seal/bund of all tanks to protect from flood. Preventing run-off to the river would be through control and management systems as set out in the EIS and according to its licence conditions.

The key concern raised by the appellant and a number of observers to the application is the issue of the landspreading of pig slurry, and in particular the lack of any detailed information within the EIS as to where spreading will take place. As I have outlined above, while this is a legitimate concern, it is indicated from the figures provided that there will be no quantitative or qualitative change in slurry arising from the proposed development, and the regulation of landspreading falls within the ambit of the EPA.

While I would have strong concerns about the overall principle of permitting a pig farm so close to a river, having regard to the planning history of the site and the size and scale of the proposed development, which in terms of environmental impact would be similar to the existing facility, I do not consider that impact on ground or surface waters to be a matter for refusal.

Flora and Fauna

The issue of the impact on flora and fauna is related to the impacts on surface water as the major potential impact is likely to be on the Figile and the Barrow downriver – the latter being a cSAC (Rivers Nore and Barrow). This is a highly extensive designated area covering much of the catchments of these rivers – the conservation objectives focus on a range of species and habitats – the crucial ones from the perspective of the proposed development are the species dependent on high water quality, including freshwater pearl mussels, lamprey and crayfish. As noted in the AA section above, the impact on the cSAC could potentially come from accidental release of manures, release during a flooding episode, or from landspreading.

The EIS provides little information on wildlife on the site or the immediate vicinity. Almost all the works will take place within an area already occupied by existing units. The area itself is typical wet grazing land – but the immediate area around the site is untended long grass. There are a number of vacant buildings on the site and the

location – close to mature trees and open water – would seem suitable bat habitat. I would consider that if bats were on the site this would be the only significant local impact on flora and fauna. The Board may wish to consider a condition requiring a bat survey before demolition, but as none of the buildings appear to have the type of secure roof area that would attract bats I would consider it unlikely that they would nest there, so I do not recommend such a condition.

In other respects, I do not consider that there would be any significant impact on flora and fauna from the proposed development, save from those impacts which potentially arise from landspreading and so are best dealt with by way of the IPPC licence.

Landscape and visual impact

The overall area is largely flat, characterised by unkempt hedgerows, small settlements, open fields, occasional raised bogs (mostly worked), and woodlands, often on drained bogs. There are no specific landscape designations.

The proposed development is not likely to have any significant impact above that of the existing pig farm. This farm is not visible from any point on the public road or other public area – it is screened by the trees and hedges on the southern side. It would be partly visible from other landholdings to the east, but these are all private lands. I therefore do not consider that there are any significant impacts, positive or negative from the proposed development and no specific conditions are required.

Amenity impacts (noise, odour and climate)

The site is approximately 300 metres from the nearest dwellings – a number of houses along the main road just west of the bridge over the Figile. During my site visit the piggery was not giving off strong odours detectable from more than about 50 metres from the buildings. The pigs were audible from about a similar distance.

The EIS gives no quantitative assessments or predictions for noise or odour impacts. Notwithstanding this, given that the proposed buildings will not generate additional manure (although there will be a larger number of pigs within the houses) I would therefore consider it unlikely, barring a failure in the management systems, that the impacts would be significantly worse than the existing baseline.

The details of managing odour will be part of the licence requirements, but having regard specifically to the existing facility and the distance from any dwellings, I do not consider that there will be any significant increase in odour or noise impacts – and the evidence is that there is no significant impact at present.

With regards to climate, the EIS addresses the issue of methane and N2O emissions – it concludes there will be no significant change from the existing facility.

Economic and material assets

The proposed upgrading of the pig farm would result in the improvement of an existing facility – this is in line with national and local guidance with regard to increasing agricultural productivity. The employment impact is likely to be minor (2-4 jobs) with others generated during construction. The physical upgrading of an existing facility would be positive. I therefore do not consider that there would be any quantitative loss in economic terms or in material assets to the area.

Cultural heritage

There are no protected structures in the vicinity, and there is no evidence of archaeological remains in the area. The works will be largely within the context of the existing built up site, so there is not likely to be any significant additional area of ground disturbance. I do not therefore consider that there is any reason to conclude that there would be an impact on local cultural heritage, and no mitigation measures or conditions are required.

Flooding

The site is within an area indicated on historic maps as having been subject to fluvial flooding. There is no evidence that the existing farm has ever flooded. The site at this point has an engineered channel with a raised bank, and it seems the historic evidence of flooding predates these works. The proposed pig houses are raised above the level of a 100 year flood and sensitive other uses are proposed to be bundled. As I have noted above, this is less than ideal and probably not be considered acceptable if this was a proposal on an undeveloped site. However, having regard to the planning history of the site and the existing farm, I consider that the proposed mitigation measures are acceptable.

Traffic and construction impacts

The site is accessed via a relatively well trafficked regional road with significant existing traffic levels, seemingly mostly connected with local agricultural and forestry activities, in addition to facilitating traffic between Portarlinton and Rathangan. The road network in the immediate vicinity would seem adequate for moderate scaled agricultural operations such as the pig farm.

Construction traffic would be significant, although I would consider it to be within the local network capacity. The planning authority did not set a construction management plan condition, although I would consider this to be necessary. I do not consider that any other conditions apart

from standard highway access conditions are required to address operational issues.

Direct, Indirect, and Cumulative impacts

The EIS submitted has little detailed information on any assessment of indirect or cumulative impacts of the proposal. There are no other piggeries or similar intensive farming operations within the vicinity of the site. Notwithstanding this, as the major potential source of impact, i.e. the production of slurry, is not significantly greater than that already produced and permitted, I consider that it would be reasonable to conclude that indirect or cumulative impacts would not be significant. The overall design and construction of the pig houses should be a distinct improvement on the existing structures and so I would expect some lowering of odour levels and other impacts, so lessening any cumulative impacts.

Concluding remarks

As I have noted above, I conclude that the proposed development does not, as submitted, represent a significant increase in the key impacts or pollutants that would normally be associated with intensive pig farms, despite the very significant increase in sow numbers. The figures available indicate no major change in slurry output, and there is no reason to anticipate greater odour, noise, or other impacts. Notwithstanding this, the nature of the changed operation (i.e. a more streamlined concentration on the production of piglets) could have unanticipated operational impacts, and of course the criteria for assessing the appropriateness of spreading slurry on agricultural land is always subject to change, especially on such potentially sensitive watercourses. The issue of controlling slurry and its spreading is primarily one for the IPPC license and as such will be assessed in due course by the EPA, as the works will require a renewed licence. In planning terms, I could conclude that there is basis on the evidence of the submitted plans and EIS that there will be any significant unacceptable impact or effect from the proposed development.

I note that the planning authority did not consider that a development contribution applies to the proposed development.

13. Conclusions and Recommendations

I conclude that the proposed development would not have a significant impact on the area or on any designated habitat, and would in other respects be acceptable and consistent with national policy and the County Development Plan.

I recommend therefore that subject to the conditions set out below the proposed development be granted planning permission.

REASONS AND CONSIDERATIONS

Having regard to the following:

- (a) the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2010,
- (b) the European Communities (Welfare of Farmed Animals) Regulations, 2010,
- (c) the provisions of "Food Harvest 2020 - a Vision for Irish Agri-Food and Fisheries" issued by the Department of Agriculture, Fisheries and Food(2010),
- (d) the nature and scale of the proposed development,
- (e) the location of the site, the characteristics of the area, and the pattern of development in the vicinity, including the distance to dwellings,
- (f) the characteristics of the proposed development, the characteristics of its potential impacts, and the mitigation measures proposed,
- (g) the planning history of the site,
- (h) the nature and scale of the existing facility on the site and its management practices,
- (i) the operation of the facility under an Integrated Pollution Control (IPPC) Licence issued by the Environmental Protection Agency,
- (j) the IPPC licence history at this site, the long period of operation of the existing facility, and the absence of complaints in relation to its operation, and
- (k) the submissions on file,

The Board considered that the environmental impact statement and natura impact assessment submitted with the application, the submissions of the planning authority, the other submissions on file, were adequate in identifying and describing the likely significant effects of the proposed development. The proposed development would, therefore, subject to the conditions set out below, not have a significant impact on the conservation objectives of a Natura 2000 site, would not seriously injure amenities of the area or cause a flood risk, and would otherwise be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the drawings and other information received by the planning authority on the 2nd January 2015, and the 7th April 2015, except where otherwise may be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. 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.


Reason: In the interest of protecting watercourses and natural habitats and the prevention of environmental pollution.

3. Landscaping of the site shall be of native species of trees and shrubs of local origin only.

Reason: In the interest of protecting local biodiversity.

4. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and amenity.


Philip Davis,
Inspectorate.

2nd October 2015