

Enforcement Appeal Decision

Appeal Reference:	2023/E0030
Appeal by:	Mr. John Dodds
Appeal against:	An Enforcement Notice dated 27 th June 2023
Alleged Breach of Planning Control:	The unauthorised development of a storage tank
Location:	Lands approximately 275m west of No. 4 Shore Avenue, Limavady
Planning Authority:	Causeway Coast and Glens Borough Council
Authority's Reference:	LA01/2019/0006/CA & EN/2023/9961
Procedure:	Informal Hearing on 3 rd May 2024
Decision by:	Commissioner Gareth Kerr, dated 24 th July 2024

Grounds of Appeal

1. The appeal was brought on Grounds (a), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 (the Act). There is a deemed planning application by virtue of Section 145(5) of the Act.

Ground (a) and the Deemed Planning Application – that planning permission ought to be granted for the matters stated in the Notice

Preliminary Matter

2. The Enforcement Notice (EN) is directed against an above ground circular storage tank for agricultural slurry. The tank was erected in the winter of 2018-19 and is comprised of pre-cast concrete panels. It has a diameter of 38.3m and is 5m in height. Under the ground (a) appeal, the appellant proposes to remove the top 2m of the tank and retain the bottom 3m. This height was selected to allow adequate freeboard above the 1 in 200 year coastal flood level. It is also proposed that a floating cover be installed. Whereas the tank was previously used to store farm slurry and digestate imported from elsewhere, it is now proposed to store only slurry from the adjacent cattle yard and only to spread slurry from the tank on lands to the west of the nearby Londonderry to Coleraine railway line, across which the access to the site runs via a user-worked level crossing (UWC).
3. The Council was of the view that the ground (a) appeal must relate to the breach of planning control as stated in the EN and not to any subsequent or future development, noting the Commission's guidance for EN appeals which states that the deemed application relates solely to the development described as a breach of planning control in the notice and cannot be extended or amended to include any other development. They also cited appeal decision 2018/E0030 where Commissioner Rue stated that the Commission does not have the power to grant permission for future development in a ground (a) appeal.

4. In support of their position that the alternative proposal was admissible, the appellant referred to a High Court decision: *Bhandal & Ors v Secretary of State for Housing, Communities & Local Government & Anor [2020] EWHC 2724 (Admin)*. This case dealt with the extent to which an Inspector can grant permission for alternative developments to remedy matters stated in an EN. A planning Inspector had refused to consider certain alternative proposals on the basis that they involved new works. Pepperall J found that the Inspector had erred in law by taking a very narrow view of his power to grant planning permission. He stated that the essential question was not whether the proposed alternative development required some additional work, but rather whether it could properly be described as relating to the whole or part of the matters enforced against. The Council and third party chose not to comment upon the *Bhandal* case law at the hearing.
5. The relevant legislative framework in Northern Ireland is based on the English model and therefore I find the *Bhandal* case to be of assistance as it concerns similar legislative provisions. However, in the case before me, any new work is even more limited than it would have been in the *Bhandal* case or appeal decision 2018/E0030. Section 145 (1) (a) of the Act gives the Commission power to grant planning permission in respect of the matters stated in the EN as constituting a breach of planning control, whether in relation to the whole or any part of those matters (my emphasis). It is a matter of planning judgement as to whether the alternative scheme now proposed can properly be regarded as part of those matters enforced against.
6. The alleged breach of planning control is simply described in the EN as a storage tank. The alternative proposal would retain the foundation, floor and lower 3m of the walls of the said tank. To my mind, it is clearly part of those matters stated in the alleged breach. The removal of the upper 2m of the walls would be permitted development under Part 33 of the Schedule to the Planning (General Permitted Development) Order (Northern Ireland) 2015 and I do not consider the placement of a floating cover within the tank to constitute development. As the alternative scheme comprises removal of part of the structure, retention of part of the same structure described in the EN and no new development is involved, I find the alternative scheme to be admissible under Section 145 (1) (a) of the Act. The remainder of my consideration of the deemed application will be based on the alternative scheme put forward by the appellant.

Main issues

7. The main issues in respect of the deemed planning application are whether the development:
 - is acceptable in principle in the countryside;
 - is necessary for the efficient use of the agricultural holding;
 - is likely to have a significant effect on protected habitats or species;
 - has satisfactory mitigations for flood risk and drainage of surface water; and
 - would prejudice public safety where the access crosses the Coleraine to Londonderry railway line.

Policy Context

8. In considering whether to grant planning permission under the deemed application, Section 145 (4) of the Act requires the Commission to have regard to the local development plan (LDP), so far as material to the subject matter of the EN, and to any other material considerations. Where regard is to be had to the LDP, Section 6

(4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

9. The Northern Area Plan 2016 (NAP) operates as the LDP for the area in which the appeal site is located. In it, the site is located in the countryside outside of any designations. The NAP contains no pertinent policies in respect of agricultural development. While not located within any environmental designations, the site lies in proximity to a number of national and European nature conservation sites including the Lough Foyle Ramsar Site, Special Protection Area (SPA) and Area of Special Scientific Interest (ASSI), which is around 500m to the south west. The River Roe and Tributaries Special Area of Conservation (SAC) and ASSI is 3.4km to the east. The site falls within a priority habitat for over-wintering Whooper Swans.
10. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out regional policy for agricultural development and the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for their council area. No PS has been adopted for this council area. The SPPS also indicates that certain existing Planning Policy Statements (PPSs) including PPS 2 – Natural Heritage, Revised PPS 15 – Planning and Flood Risk and PPS 21 – Sustainable Development in the Countryside are retained during the transitional period. There is no conflict or change in policy direction between the provisions of the SPPS and the retained policies insofar as they relate to this appeal.
11. Policy CTY1 of PPS 21 states that there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. These include agricultural and forestry development in accordance with Policy CTY12. Other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. Policy CTY12 states that planning permission will be granted for development on an active and established agricultural holding where certain criteria are met. Two of these criteria are disputed in this appeal, namely:
 - (a) it is necessary for the efficient use of the agricultural holding; and
 - (d) it will not have an adverse impact on the natural or built heritage.
12. PPS 2 sets out planning policies for the conservation, protection and enhancement of natural heritage. Policy NH1 applies to European and Ramsar sites including the Lough Foyle Ramsar/SPA. These sites are afforded the highest form of statutory protection. It states that planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on such sites. Policy NH1 goes on to state, “Where a development proposal is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the Department shall make an appropriate assessment of the implications for the site in view of the site’s conservation objectives. Appropriate mitigation measures in the form of planning conditions may be imposed. In light of the conclusions of the assessment, the Department shall agree to the development only after having ascertained that it will not adversely affect the integrity of the site.”
13. Policy NH2 of PPS 2 relates to species protected by law. It states that planning permission will only be granted for a development proposal that is not likely to harm a European protected species. Planning permission will only be granted for a

development proposal that is not likely to harm any other statutorily protected species and which can be adequately mitigated or compensated against. Development proposals are required to be sensitive to all protected species, and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places.

14. Policy NH3 concerns sites of national nature conservation importance including the Lough Foyle ASSI. Planning permission will only be granted for a development proposal that is not likely to have an adverse effect on the integrity, including the value of the site to the habitat network, or special interest of ASSIs. A development proposal which could adversely affect a site of national importance may only be permitted where the benefits of the proposed development clearly outweigh the value of the site. In such cases, appropriate mitigation and/or compensatory measures will be required.
15. PPS 15 sets out planning policies to minimise and manage flood risk to people, property and the environment. It adopts a precautionary approach to development in flood plains and takes account of climate change. Policy FLD1 relates to development in fluvial (river) and coastal flood plains. Development will not be permitted within the 1 in 200 year coastal flood plain unless the applicant can demonstrate that the proposal constitutes an exception to the policy. Where a development meets the exception test, a Flood Risk Assessment (FRA) is required to demonstrate that all sources of flood risk to and from the proposed development have been identified and there are adequate measures to manage and mitigate any increase in flood risk arising from the development.
16. Policy FLD3 concerns surface water flood risk outside flood plains (my emphasis). It requires that a drainage assessment is undertaken for development proposals that exceed certain thresholds including a change of use involving new buildings or hard surfacing exceeding 1000m². Although the deemed proposal exceeds this threshold, Policy FLD3 cannot apply to it as the site is within a flood plain and subject to the higher level protection afforded by Policy FLD1. In any case, the appellant's FRA confirms that all rain falling over the tank area would be collected within the tank and this would result in a decrease in runoff rates compared to before the development took place. Accordingly, the Council has not sustained its seventh draft reason for refusal.
17. Paragraph 3.8 of the SPPS states, "the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance." One such interest of acknowledged importance is public safety for users of the Londonderry to Coleraine railway line which crosses the site entrance. The implications of the development for public safety at the UWC is a material consideration in the appeal.

Efficient use of the agricultural holding

18. The appellant's farm business was established in 1972 and is based nearby at Carrowclare Road. It now comprises around 100 ha. of land with additional land taken in conacre. The land at Shore Avenue, within which the appeal site is located, was purchased and added to the farm in 1985. It comprises approximately 32 ha. The business operates as a mixed farm with cattle, sheep and arable enterprises.

The appellant's cattle enterprise is primarily based at the Shore Avenue farm complex. Purpose-built facilities at this location include cattle sheds with slatted tanks, silage pits, hay and straw sheds, a midden for storage of manure and pens for cattle handling. As the appellant had insufficient storage for slurry in the existing underground tanks, the above-ground store subject to the EN was erected. Slurry can be pumped from the existing tanks to the above ground tank to ensure adequate storage provision for the closed spreading season. Dirty water from yard run-off is also added to improve the viscosity of the slurry. The Carrowclare Road farm complex is the base of the arable and sheep enterprises and buildings there include sheep sheds and grain stores. Although some calving takes place there, there are no slatted tanks for housing of larger cattle.

19. The Council and third party were of the opinion that the tank is considerably larger than required to store the amount of slurry generated by the cattle enterprise. They highlighted the fact that liquid digestate had been imported to the tank from Granville Ecopark Ltd, an anaerobic digestion facility near Dungannon. The appellant stated that they hadn't enough organic manure for their whole landbank including the arable enterprise, so the additional digestate was imported to improve crop growth and reduce the need for chemical fertilisers which became prohibitively expensive after the Russian invasion of Ukraine. However, the importing of digestate is no longer part of the proposal and the appellant is willing to accept a planning condition that no off-site slurry is delivered to the farm and that the reduced scale tank will only accept slurry from the cattle yard's existing slatted system.
20. The Nutrient Action Programme (NAP) Regulations (Northern Ireland) 2019 require the farm business to have a minimum of 22 weeks storage for slurry during the closed spreading period. The necessary storage capacity will be a product of the stock count on the farm and the volume of slurry produced per animal during the housing period which was stated to be 6 months. There was dispute among the parties as to the stock numbers upon which the calculations should be based and the capacity of the sheds on the Shore Avenue holding. Both the appellant's and the third party's agricultural consultants based their calculations on the Nutrient Management Plans (NMPs) for use of the farm's cattle slurry for the year 2023. NMPs match nutrient inputs to crop demand in specific fields and slurry volumes are based on the average stocking rate for the farm over the previous year as recorded on the Department for Agriculture, Environment and Rural Affairs (DAERA) online system. The relevant number was 374.6 cattle. The Council was of the view, based on a site meeting where cattle were counted, that the existing sheds could only hold 200 – 220 cattle during the housing period. The third party's expert witness suggested that the sheds could hold around 285 head of cattle based on standard space requirements. He questioned where the extra 90 or so cattle could be housed on the holding during the winter period.
21. The appellant indicated that overall stock numbers could fluctuate over the course of a year in accordance with business and market conditions. The Council accepted this principle at the hearing. They also accepted that the shed could hold more animals than their estimate if there was a mix of stock sizes (as is the case). I consider the average annual stocking rate from the DAERA online system to be a more reliable indicator of stock levels than the Council's approach of counting the cattle in the sheds on a particular day. With regard to the queries raised by the third party, the appellant confirmed that a number of stock are housed on straw beds at both farm complexes, particularly in the calving period. Given the much smaller

volume of slurry produced by calves, I consider that their absence from the slatted system for a portion of the year would not have a large effect on the overall slurry storage requirement. The appellant indicated that in the current year, stock have been housed for 7 months at the date of the hearing due to the poor weather conditions which has delayed them being put out to grass. This would increase the slurry storage requirement, compensating for those housed on straw beds in the winter months. The appellant currently has around 85 ha. of grass which is a sufficient grazing platform to support the number of stock. More stock can be held over the summer months when most are grazing and don't need to be housed. Taking account of seasonal factors and the way stock are managed through the year, I am satisfied that the average annual stocking rate upon which the NMPs are based is an appropriate basis on which to calculate the slurry storage requirements. The NMPs indicate that 2337.05m³ of cattle slurry will be produced for livestock housed for a period of 6 months.

22. There was also debate as to the capacity of the existing tanks in the farm's slatted storage system. Dimensions of the existing tanks were provided at the hearing. It was agreed that the tanks have a total capacity of 1124.38m³. The third party's witness calculated that this would give 11.76 weeks of storage, or approximately 13 weeks if sheep and calves which are straw bedded were taken out of the calculation. This indicates a deficit of 1212.67m³ between the established storage and the minimum requirement. There is a need for some additional capacity. The gross capacity of the reduced scale tank would be 2755m³, or 2384.5m³ net allowing for freeboard and rainfall allowance. If approved, total slurry storage capacity on the holding would be 3508.88m³. This would provide approximately 50% more additional storage than the minimum requirement for the stock numbers provided.
23. The Council and third party were of the view that the level of additional storage that would be provided by the proposal was excessive for the efficient use of the holding and that having more volume available than required would be an invitation to fill it to capacity, with the potential for increased traffic movements across the railway line. However, again, the appellant has offered to accept a condition prohibiting the import of slurry or digestate from off-site. The tank would only be used to store slurry generated on the Shore Avenue holding and all slurry from the tank would be spread on the western side of the railway line. This would result in fewer trips across the railway line. There is no proposal to increase the number of cows on the holding as this would require additional housing. As some of the slurry would be spread on a neighbouring landowner's field, the third party argued that a tank of this size was not required for the efficient use of the appellant's farm holding. However, the appellant has more than enough land to utilise all the slurry produced at Shore Avenue and is offering to restrict spreading only to fields west of the railway line to allay the third party's public safety concerns regarding use of the crossing. To do so will require the use of one neighbouring field in addition to his own land. I am not persuaded that this offer of betterment should be counted against the appellant when assessing the efficient use of his holding.
24. While the NAP Regulations may require a minimum of 22 weeks storage, the relevant test in Policy CTY12 is whether the proposal is necessary for the efficient use of the holding. The appellant presented several factors relevant to the efficient use of slurry on the holding. His farm business has a significant arable enterprise and he was one of the first in the area to apply slurry to arable crops, achieving good results. To do so, it is necessary to apply the slurry at the right time for optimum

growth. Therefore, it has to be stored until the optimum time. Simply applying it in February when the spreading season opened to empty the tanks would be inefficient. The weather in the early part of 2024 was also cited as a reason for additional storage. Due to prolonged wet weather, it had not been possible to spread any slurry on the farm up to the date of the hearing, despite the spreading season opening on 1st February. They stated that it has been essential to have the extra storage in place to prevent damage being done to the ground by machinery working in unsuitable conditions and associated environmental damage through runoff from waterlogged soils. Before the store was erected, slurry had to be spread in unfavourable conditions and no slurry was applied to the arable land.

25. The appellant referred to appeal decision 2022/E0036 which was issued on the morning of the hearing for this appeal. They stated that qualitative factors in relation to the efficiency of the farm were taken into account. As this decision was raised at a late stage in proceedings, the other parties were given an opportunity to submit comments on it after the hearing. The appeal decision referred to related to an unauthorised slurry storage tank near Fivemiletown. It was determined in a different policy context as the relevant Council had adopted their Plan Strategy, however, the applicable provisions were similar. The key issues were different in that the tank was smaller and sited away from existing buildings on the holding and this was found acceptable due to a combination of biosecurity issues, practical farming arrangements, efficiency and ammonia levels at a priority habitat adjacent to the main farm complex. It appears that the farm was fully grass-based and there was no dispute about the volume of the tank or any public safety concerns. Accordingly, it does not stand on all fours with this appeal. Each case must be determined in its own evidential context, though I agree with the appellant that it is appropriate to weigh the efficiency of the specific farm business in the overall planning balance.
26. The NAP Regulations introduced an element of farming by the calendar which is not always best in reality. Weather in Northern Ireland often affects the times that slurry can be spread, even in the open spreading season. In post-hearing evidence, the third party suggested that the provision of 26 weeks storage would be a sufficient buffer to allow for adverse weather conditions that prevent spreading. However, in the current year, no spreading had been possible for around 30 weeks at the date of the hearing (since the closed period began in October 2023). Even though ground conditions began to improve from May onwards, standing crops, pasture and forage were at a stage of growth where slurry could not be applied without damaging them, so this would have resulted in further delay (until after the first cut of silage was taken, pastures were grazed or arable crops are harvested later in the summer).
27. 2024 is not the only year where ground conditions have been difficult during the spreading season. In order to make the best use of the organic manure on this mixed farm and cause the least environmental harm, I accept the principle that more than the minimum 22 weeks storage is required for the efficient use of the agricultural holding. As this particular farm has a significant arable enterprise in addition to its livestock business and the times when slurry can be applied to arable land are more limited due to crop growth, there is a case for permitting extra storage capacity to ensure that slurry can be used efficiently. Retention of a 3m tank on the site would enable the efficient use of slurry on the Shore Avenue agricultural unit as it could be stored for longer and applied when the most benefit will be derived. In the evidential context, the proposal complies with criterion (a) of Policy CTY12.

Effects on Habitats and Species

28. Regulation 43 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) requires that a competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
- (a) is likely to have a significant effect on a European site in Northern Ireland (either alone or in combination with other plans or projects), and
 - (b) is not directly connected with or necessary to the management of the site,
- shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives. The authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site.
29. The Council's Shared Environmental Service (SES) undertakes Habitats Regulations Assessments on behalf of the competent authority. However, as jurisdiction has now passed to the Commission, it is now the competent authority for the purposes of the above Regulations. It therefore falls to me to carry out an appropriate assessment as part of this decision.
30. The appeal site lies in proximity to a number of designated sites and habitats including those referred to in paragraph 9 above. Of most significance is the proximity of the Lough Foyle Ramsar, SPA and ASSI approximately 500m to the south west. There is growing concern about the effects of ammonia emissions from agriculture on local biodiversity, habitats and air and water quality. The Council submitted a report entitled, '*The Impact of Ammonia Emissions from Agriculture on Biodiversity (2018)*,' which sets out four main mechanisms by which ammonia impacts biodiversity: eutrophication, acidification, direct toxicity and indirect effects. The impact on biodiversity can be through soil and water (eutrophication and acidification), air (direct toxicity) and air, soil, and water (indirect effects, primarily changes in species composition due to a higher nitrogen environment). Ammonia is one of the main sources of nitrogen pollution, along with nitrogen oxides. A major effect of ammonia pollution on biodiversity is the impact of nitrogen accumulation on plant species diversity and composition within affected habitats. The location of the site in a low-lying area with a direct hydrological connection to Lough Foyle increases the likelihood of ammonia dispersion and transmission to the designated sites.
31. The Northern Ireland Environment Agency (NIEA) was consulted by the Council in preparation for the appeal hearing and they raised air quality concerns with the proposal which were discussed at the hearing. The '*Air Pollution Trends Report 2023: Critical load and critical level exceedances in the UK*' provides key information on UK ecosystems relating to air pollution targets and provides the means to develop targeted action for emission reduction policies. It reports the following statistics:
- 100% of SACs and 100% of SPAs had nitrogen deposition rates exceeding their Critical Load.
 - 99.5% of ASSIs, which are nationally important sites, had nitrogen deposition rates exceeding their Critical Load for at least one feature.
 - 100% of SACs, 100% of SPAs and 98.6% of ASSIs in NI had ammonia concentrations greater than $1\mu\text{g m}^3$ (the long term annual average Critical Level for lichens and mosses and for ecosystems in which they are important).

- 14.8% of SACs, 14.3% of SPAs and 12.8% of ASSIs in NI had ammonia concentrations greater than $3\mu\text{g m}^3$ (the long term annual average Critical Level for higher plants including heathland, semi-natural grassland, and forest ground flora).
32. Following concerns raised by the Office for Environmental Protection about the NIEA's reliance on its published Ammonia Standing Advice as the basis for statutory advice on planning applications, NIEA has been providing competent authorities with case and site-specific advice since December 2023 (on a case-by-case basis) until such times as a new ammonia strategy and updated standing advice have been agreed and are in place. NIEA considered the appellant's Air Quality Impact Assessment (AQIA) and applied a decision-making threshold of 0.08% of the Critical Level. They considered that the proposal represented a high risk to the qualifying features of Lough Foyle ASSI / SPA / Ramsar and therefore they had air quality concerns with the proposal.
 33. Although NIEA's operational policy changed in December 2023 after completion of the appellant's AQIA, the NIEA witness confirmed at the hearing that the AQIA is not out of date. What has changed is the NIEA approach to assessment of impacts. They are now focusing on deposition of ammonia. The AQIA reports Critical Levels of ammonia (in air) whereas NIEA is now concerned with Critical Loads (deposition on the ground). Although Critical Loads are not modelled in the AQIA, they can be derived from the information therein.
 34. Lough Foyle is designated as an SPA due to the abundance of nationally and internationally important waterfowl it supports. At the time the SPA was designated, it supported 5.6% of the international population of Whooper Swans, 18.7% of the international population of Light-bellied Brent Goose and 1.9% of the international population of Bar-tailed Godwit in addition to other nationally important species. Additional selection features under the Ramsar designation include that it is a particularly good representative example of a wetland complex including intertidal sand and mudflats with extensive seagrass beds, saltmarsh, estuaries and associated brackish ditches. The shore supports a range of mussels, barnacles and invertebrates. Important populations of Atlantic Salmon migrate through the Foyle system to and from their spawning grounds. The deposition of ammonia (in the form of nitrogen) onto the Lough Foyle saltmarshes could result in the increased growth of algae and other vegetation which smothers traditional plants and grazing areas in the supporting habitat of the protected waterfowl referred to above.
 35. The NIEA witness stated that the ammonia air concentration at Lough Foyle was currently acceptable at 9.8 kg/N/ha/yr (which is below its Critical Load of 10 kg/N/ha/yr). However, they were concerned that land spreading of slurry would cause it to exceed the Critical Load based on a process contribution of 1.35 kg/N/ha/yr. NIEA also referred to the absence of soil sample analysis for the nominated land banks for spreading. I was advised that if the soil samples showed exceedance of particular nutrients in the receiving fields, changes to the AQIA would be required. I therefore agreed to accept soil analysis results for the relevant fields as post-hearing evidence and that the other parties could comment on them in writing.
 36. Upon receipt of the soil samples after the hearing, all parties accepted that the nominated land banks on the western side of the railway could accept the 2337m^3

volume of slurry proposed. NIEA Water Management Unit (WMU) advised that they would like to see additional information regarding the soil samples including the sampling methodology, dates they were taken, name and contact details of the sampler and a copy of the analysis results to be sent directly from the analysing laboratory. I understand that NIEA introduced these requirements following concerns about the submission of fraudulent soil sample results to support planning applications. Having considered the information provided, I note that the samples were taken, not for the purposes of the planning appeal, but as part of routine sampling of the farms, and they provide dates, names and contact details for the sampler. I further note that there is no dispute that the identified fields can accept the proposed volume of slurry. In light of these factors, I have no reason to doubt the veracity of the information provided and the matters raised by WMU would not, in this instance, warrant further delay in the determination of the appeal.

37. The soil samples were accompanied by a letter from the appellant's air quality consultant. It stated that the results and conclusions set out in the AQIA remain unchanged as a result of the soil sampling undertaken. It then went on to set out nitrogen deposition rates at Lough Foyle from the tank itself and the associated land spreading. The process contribution of the tank would equate to 0.34 kg/N/ha/yr and the land spreading would contribute 1.01 kg/N/ha/yr. It can be seen that land spreading is the main contributor to nitrogen deposition. However, it was stated that land spreading on these fields would continue irrespective of whether or not the tank was approved. This is effectively a fallback argument. The letter also stated that the current background levels of ammonia for the UK have been updated to the years 2019-2021 and at that point the Critical Load for Lough Foyle was 9.8 kg/N/ha/yr. As the tank was built and operational at that time, its associated emissions are included within that figure which is below the appropriate Critical Level of 10 kg/N/ha/yr. The appellant argued that it was not appropriate to double count the impact of the tank as NIEA had done in its initial consultation response.
38. Upon receipt of the above information, NIEA advised that if aerial emissions from the proposal are considered to be in the background, as per the most recent correspondence, then there is no exceedance of the Critical Load at Lough Foyle ASSI/SPA/Ramsar, and as stated in the previous consultation response, there is no exceedance of Critical Levels associated with the proposal.
39. For the purpose of assessing the effects of the proposal on protected habitats and species, it is important to recognise the retrospective nature of the development and the appellant's existing use rights. The proposal is not for a new cattle unit and slurry system which will introduce additional nitrogen deposition if approved. The tank has been in situ since 2019 and its ammonia emissions are therefore already incorporated in the background levels reported. Slurry from the unit has been spread on the adjacent fields annually over this period and even if planning permission for the tank was refused, the appellant's fallback position that he would continue to spread cattle slurry generated on the holding on these lands is a realistic one. Such land spreading is already accounted for in the nitrogen deposition rates at the designated sites and therefore, continuing to spread the same volume of slurry on these lands would not further add to nitrogen deposition, irrespective of the outcome of the appeal.
40. SES was consulted with the post-hearing evidence referred to above and the final position of NIEA as set out in paragraph 38. They were of the view that while an

established, registered herd could, in circumstances, be considered as contributing to background ammonia emissions, emissions arising from the unauthorised use of the (reduced) 3m tank cannot because the volume of slurry stored and potentially spread could be 261% of the background capacity.

41. I am not persuaded by the SES analysis. The 5m high tank and a similar sized herd of cattle were present and operational when the background levels were established. Slurry from this amount of cattle has been spread on the land for many years in accordance with NMPs. The 5m high tank allowed it to be stored for longer and some additional digestate was imported. This is no longer part of the proposal. The 3m high tank now proposed will store less slurry. It will have the same surface area, though there will be mitigation in the form of a floating cover which should reduce emissions and provision of this can be conditioned. There is no proposal for an increase in the size of the herd as more shed space would be required. As the slurry produced by the existing herd and its ongoing land spreading has already been accounted for in the background figures, I do not accept that granting permission for the development would result in exceedance of the Critical Level for Lough Foyle.
42. If permission was refused and the tank had to be removed in its entirety to comply with the EN, the cattle on the holding would continue to produce the same amount of slurry and the appellant would continue to spread it on the land. He may be forced to empty his tanks more regularly and to spread in unfavourable weather conditions which could result in greater damage to the environment and protected habitats. This appeal cannot remove the appellant's existing use rights on his farm, force him to reduce livestock numbers, or to move slurry elsewhere. Indeed, to do so could be considered prejudicial to public safety due to additional trips across the railway line.
43. I have no doubt that the appellant's fallback position is truly a realistic possibility and that he would continue to spread slurry on the land as he is entitled to do, provided he does not exceed the annual limit of 170 kg/N/ha/yr. Doing so without the use of the proposed tank is likely to result in greater harm to the environment as a result of slurry being spread in unfavourable conditions and potentially reaching Lough Foyle. For these reasons, I consider that the appellant's lawful fallback position should be afforded significant weight in the determination of the appeal. With the 3m high tank in place, the appellant would be able to store and then spread slurry at the optimum time in terms of both farm efficiency and minimising environmental impact. In light of the ammonia figures provided, the analysis of the air quality consultant and the comments of NIEA, I am satisfied that there will be no exceedance of the Critical Load at Lough Foyle ASSI/SPA/Ramsar, and I am satisfied to the standard of reasonable scientific certainty that the proposal would not adversely affect the integrity of any European site.
44. As it has now been demonstrated that the development is not likely to have a significant effect on any European site, it satisfies Policy NH1 of PPS 2. The Council has not sustained its third draft reason for refusal.
45. As it has now been demonstrated that the development will not result in exceedance of the Critical Load for nitrogen deposition at Lough Foyle, it will not lead to unacceptable nitrogen enrichment of the supporting habitat of European or national protected species which use the Lough and its environs. The proposal therefore complies with Policy NH2 of PPS 2 and the Council has not sustained its fourth draft reason for refusal.

46. Lough Foyle ASSI is designated due to coastal processes, coastal saltmarsh habitats, invertebrate assemblage and overwintering bird assemblage. As it has now been demonstrated that the development will not result in exceedance of the Critical Load for nitrogen deposition at Lough Foyle, I am satisfied that there will be no adverse effect upon the integrity of the designated site, including the value of the site to the habitat network. The proposal satisfies Policy NH3 of PPS 2 and the Council has not sustained its fifth draft reason for refusal.
47. As no adverse impacts on natural heritage have been demonstrated, the proposal complies with criterion (d) of Policy CTY12 of PPS 21. As I have previously concluded that the proposal also complies with criterion (a) of Policy CTY12, it meets the requirements of Policy CTY12, read as a whole. The Council has not sustained its second draft reason for refusal.

Flood Risk

48. The appeal site sits within an area of land reclaimed from Lough Foyle and protected by a sea wall. A pumping system prevents inundation of the area by sea water. Policy FLD1 describes defended areas as previously developed land protected by flood defences that are confirmed by DARD (the Department for Agriculture and Rural Development), as the competent authority, as structurally adequate and provide a minimum standard of 1 in 200 year coastal flood protection. Flood Risk Management is now the responsibility of the Department for Infrastructure (DfI) rather than DARD. DfI Rivers described the sea wall as a DfI-maintained coastal defence. Although there is no history of coastal flooding at the appeal site since the sea wall was erected in the mid-19th Century, I was advised at the hearing that the sea wall has not been subject to detailed modelling and DfI cannot say with certainty that the defence provides full protection against a 1 in 200 year flood event. Accordingly, the hydraulic model treats the area as undefended for flood risk purposes. The appellant's FRA was prepared on this basis.
49. Policy FLD1 sets out six exceptions where development in undefended flood plains may be acceptable subject to an FRA. It was agreed by the parties at the hearing that the relevant exception for consideration in this appeal is (d) development for agricultural use, transport and utilities infrastructure, which for operational reasons has to be located within the flood plain. The Council and third party argued that the tank could be located outside the flood plain at the Carrowclare Road holding. The appellant stated that running sand has been encountered during previous development in that area which would preclude the construction of underground tanks, though they accepted that an above-ground store could potentially be constructed. However, of greater concern was the fact that the cattle business and existing slurry system is located at Shore Avenue.
50. Paragraph 6.19 of the Justification and Amplification to Policy FLD1 recognises that in certain cases, development has to be within flood plains as alternative lower flood risk sites would be neither practical nor available. In regard to agricultural development, the exception will only apply where the unit is located wholly in the flood plain, or where the use of other land outside the flood plain would not be feasible and available. I note that this guidance refers to the agricultural unit and not the entire farm business. The appellant's farm business consists of two separate and distinct agricultural units or holdings. The Carrowclare Road holding is the

centre of the arable and sheep enterprises and the Shore Avenue holding, which is wholly within the flood plain, is where the cattle enterprise is based.

51. Even if it were possible to construct the necessary tanks at Carrowclare Road, I consider it impractical to require the appellant to relocate his entire cattle enterprise to that location as this would entail the construction of new housing and tanks for hundreds of cows. Indeed, I cannot remove existing use rights from the Shore Avenue holding where cows have been kept by the appellant for at least 40 years. While it would be possible to construct a new store at Carrowclare Road and ferry the slurry to it from Shore Avenue in tankers, this would be both inefficient and prejudicial to public safety as a result of additional journeys across the railway line. It is in the interests of the farm business, and the general public interest, that the slurry generated on the Shore Avenue holding is stored there. Accordingly, I conclude that exception (d) is engaged as alternative lower flood risk sites would be impractical. I have already found that additional slurry storage capacity is necessary for the efficient use of the agricultural holding. The slurry must be stored close to where it is produced. This means that for operational reasons, it has to be located at the Shore Avenue farm complex which is within the coastal flood plain.
52. The appellant provided a FRA with his appeal evidence. Although it is predicated upon the existing 5m high tank, its data can be applied to the 3m high proposal before me. The 1 in 200 year flood level for the area is stated to be 2.69m Above Ordnance Datum (AOD) based on Dfl modelled tidal and meteorological conditions and associated storm surge. In order to account for climate change or wave overtopping action due to wind the value was raised to 2.91m AOD. Ground levels surrounding the tank range from 0.13m to 0.44m. Based on an average ground level of 0.28m, the proposed 3m high tank would exceed the 200 year flood level by 0.59m and the climate change level by 0.37m.
53. Unhelpfully, the Dfl Rivers witness had not read the FRA before the hearing. I note the fact that the site is practically (if not theoretically) defended by a sea wall and that there has been no record of flooding since it was erected. However, in light of the uncertainty as to the level of protection provided by the sea wall, it is appropriate that a precautionary approach is adopted. From my careful study of the document, I am satisfied that the proposed 3m height would give adequate protection or freeboard against overtopping in the most extreme flood event likely to occur. The FRA goes on to state that the loss of flood plain storage as a result of the development would be negligible compared with the vastness of the sea, so it would not result in a material increase in the risk of flooding elsewhere. The Dfl Rivers witness accepted this principle at the hearing.
54. The Council argued that the necessary level of additional slurry storage capacity could be provided without the risk of flooding by a 3m high tank of smaller diameter. However, the proposal before me is a reduced height version of the tank subject to the EN. I am satisfied that if reduced to 3m in height, it would provide adequate protection against flooding and provide the additional slurry storage capacity needed for the efficient use of the agricultural holding, for the reasons set out above. While a slightly lower tank might meet the appellant's agricultural requirements, it would be at risk of inundation in an extreme flood situation. As a 3m high tank would mitigate against this situation, it weighs in favour of the proposal in the overall planning balance. I conclude that the deemed proposal complies with Policy FLD1 of PPS 15. The Council has not sustained its sixth draft reason for refusal.

Public Safety on the Coleraine to Londonderry Railway Line

55. The only access to the Shore Avenue farm complex where the tank is situated is a laneway which crosses the Coleraine to Londonderry railway line at a UWC. The railway line is operated by Translink and they objected to the proposal on public safety grounds due to the risk to farm workers, visitors, train crews and passengers. They stated that the crossing has a significant history of misuse over a number of years with 118 incidents recorded since 2013 including a near miss train collision in 2018. They alleged that in March/April 2023, the gates were left open for several hours to facilitate the removal of slurry by multiple tractors and tankers and this allowed other vehicles and pedestrians to cross back and forth unrestricted. Translink and the Council were of the view that granting permission for the tank would result in an increase in traffic movements across the railway line and that this would increase the potential for misuse of the crossing to occur.
56. The railway line at the access to the appeal site is a single track with a line speed of 70 mph which is currently used by 32 trains per day. During 2023, there were 640,722 passenger journeys along the Coleraine to Londonderry rail corridor, an increase of 11.1% from the previous year. Given the increasing demand, Translink plans to increase the capacity and frequency of services on this section of the line in the future. Unlike level crossings found where railway lines cross most public roads, where an oncoming train triggers the lowering of barriers and flashing stop signals, a UWC requires the manual operation of the gates on both sides of the track. As the user controls when they open and close the gates and cross the line, a strict set of operational protocols must be followed to ensure safety. Instructions for safe operation are displayed at both sides of the crossing along with green and red warning lights. There is an audible alarm system which sounds when a train is approaching and a telephone system linked to the Coleraine Signal Control Centre. CCTV cameras relay images to the Control Centre. Misuse of the crossing is reported by passing train drivers and can be reviewed on the CCTV.
57. Of 49 UWCs on the Northern Ireland rail network, this UWC is ranked by Translink as having the fourth highest level of risk. This is based on the legitimate use of the crossing and does not account for additional movements which have arisen from the unauthorised slurry tank. Alleged misuse of the crossing led to High Court proceedings in September 2023 which remain ongoing. I was advised that the appellant had given a written undertaking to the High Court that the crossing would be used safely in accordance with the UWC operating procedures. However, Translink has alleged further breaches of this undertaking in the intervening period. As the proceedings remain live, the parties were unable to comment further on them at the appeal hearing.
58. The appellant acknowledges that public safety on the railway line is an incredibly serious matter and that it is a material consideration in the appeal, but contests the number of alleged incidents referred to by Translink. Based on the incident data provided by Translink, the appellant pointed out that as many instances were recorded in the five years prior to the erection of the tank as in the five years since, so the tank has not necessarily exacerbated any problem. The near miss collision took place before the tank was erected. Some of the alleged incidents are nothing to do with the appellant's family. While Translink referred to a history of fatal collisions on these types of crossing on this section of railway line, the appellant pointed out that none of these had occurred at this particular crossing. They submit

that the appeal must be determined on the basis that other enforcing regimes will operate properly and that Translink's grievances about historic use of the crossing are immaterial. The appellant is required to utilise the crossing in accordance with the law and if issues arise, they will be dealt with in accordance with other legislative regimes.

59. The appellant stated that they have been trying to resolve the dispute with Translink since 2019, but have been disappointed with Translink's co-operation. They have put numerous safety proposals to Translink, but they will not consider them until the High Court proceedings are complete. The appellant argued that they do not have to police the railway on behalf of Translink and highlighted that under Section 47 of the Railways Clauses Consolidation Act 1845, it is the responsibility of the railway company to erect and maintain the gates at a level crossing. The appellant has historic rights of access across the crossing and Translink can't use the appeal to curtail the existing farm business.
60. While the crossing leads only to the appellant's farm complex, in practice it can be operated by anyone wishing to cross the track. When I visited the site unannounced before the hearing, I was able to operate the crossing on the way to and from the farm and I observed trains passing on the line. On one occasion, I had to wait for a train to pass in accordance with the instructions. I observed the high speed of trains on the line and I agree that it is essential that the crossing is operated in accordance with the instructions to ensure safety. Just as I visited the farmyard in the course of my work, it is likely that other people may have cause to do so for business purposes. Visitors to a farm could include salespeople, delivery drivers, vets, inspectors, staff and contractors. While the appellant should bear responsibility for his own staff and contractors crossing the line safely, he cannot be held responsible for everyone who crosses the line to the farm. Ultimately, responsibility lies with each user of the crossing. Enforcement of safe use of the crossing is matter for Translink. The ongoing High Court proceedings are not a matter for this appeal. Neither can the appeal restrict the appellant's current rights of access across the railway.
61. The appellant already has the right to cross the railway to and from the farm and could continue to draw slurry from the existing lawful tanks to other parts of the farm irrespective of the outcome of the appeal. The key question before me is whether the appeal proposal for a 3m high tank would cause an unacceptable increase in risk to the travelling public and users of the UWC as a result of additional journeys across the railway. To answer this question, the mitigations proposed by the appellant must be considered. To address Translink's concerns and offer betterment of the present situation, the appellant is offering to store only slurry generated on the Shore Avenue holding in the tank and only to spread it on the fields on the western side of the railway line. They are willing to accept planning conditions to this effect. Translink and the Council were of the opinion that such conditions would be unenforceable.
62. Digestate will no longer be imported to the tank which will negate the need for tanker lorries to cross the line. Translink argued that it would not be possible to know from CCTV images whether tractors with tankers crossing the line were empty or full. However, from my understanding of the appellant's slurry spreading system, I consider that the need for any tankers to cross the line to the new tank will be minimal. The appellant explained at the hearing that most of his slurry is spread using an umbilical pipe system where it is pumped directly from the tank to a trailing

shoe system mounted on the tractor in the field. This reduces ground compaction caused by tankers. Each application of slurry to the nominated fields would only require a pumping tractor and a spreading tractor to cross the railway at the start and end of the operation. A tanker would only be required for any areas beyond the reach of the pipe. I consider that such movements would be easily identifiable on the CCTV.

63. As the appellant only has three fields on the western side of the track totalling some 31.59 ha., he proposes to spread some of the slurry on a 36.34 ha. field belonging to a neighbouring landowner, Mr Wray. A separate NMP for this arrangement has been drawn up and a five-year agreement between the respective farmers for supply of 955m³ per year of slurry was provided. NIEA has confirmed that this land has the capacity to receive the slurry. Translink argued that this arrangement could only continue as long as Mr Wray's land was available and the agreement with him is not open-ended. However, the appellant stated that given the prevalence of arable farming in this area, local farmers are always looking for organic material to apply to their crops. In the event that Mr Wray no longer required the slurry, it would be possible to reach an agreement with another farmer on the western side of the railway line. As there is an agreement in place for up to five years and there appears to be scope to replace this land with other land to the west of the railway if necessary, I consider that a condition requiring that the slurry from the tank is spread to the west of the railway line would be enforceable and reasonable in the circumstances. As Mr Wray's land is closer than some of the appellant's fields, it could also be spread using the pipe system and the condition should result in a net reduction in trips across the railway with slurry spreading equipment.
64. Translink has the means to identify the nature of trips across the line using its CCTV and if breaches are suspected, CCTV evidence can be passed to the planning authority for further investigation. If alleged trips originate from the existing lawful tanks, the appellant can provide evidence to this effect and they would not fall foul of the condition. As an additional safeguard, the appellant suggested that an alarm system that records the level of slurry in the tank could be installed and records of its level could be provided to the Council on request. From this information, it would be possible to see the annual filling and emptying of the tank and any anomalous imports of slurry from outside the unit should be obvious. Requiring such a system to be installed on the reduced height tank in accordance with a specification to be agreed in writing with the planning authority would ensure that if an allegation is made that other conditions are being breached, there would be data available to the Council to help determine whether this was the case or not.
65. For these reasons, I consider that conditions restricting storage and spreading of slurry to the western side of the railway would be enforceable by the planning authority and the concerns about their enforceability raised by Translink must be dismissed. In my view, the proposal will result in a public benefit to Translink as for the first time, there will be some restriction on the trips that can be made across the railway line for agricultural purposes. I cannot restrict the farm's existing rights to cross the track, but the conditions will ensure that the proposed tank will not increase trips across it, and they may in fact result in a modest reduction. Conversely, if permission was to be refused, the circular tank would be removed, but there would still be a high volume of slurry to be utilised from the cattle unit at Shore Avenue and without the necessary winter storage on site, it is inevitable that slurry would have

to be exported from the unit in tankers across the railway. Accordingly, there could be greater risks to public safety if permission was refused.

66. Public safety for users of the railway and UWC is of paramount importance in this appeal. From the evidence before me, the safest course in the event of planning permission being granted would be to approve the development with conditions that will greatly restrict the need for trips across the line to service it. While this would not negate the need for other trips across the line for agricultural purposes, these are out with the scope of the appeal. As I have found the relevant conditions to meet the tests for planning conditions including enforceability, the Council's eighth draft reason for refusal and the associated objections by Translink cannot be sustained.

Planning balance and conclusions

67. It has been established that there is a need for additional slurry storage capacity on the farm to meet the minimum storage requirement of the NAP regulations. The proposed 3m tank would allow for approximately 50% more storage than the minimum requirement. The relevant test in planning terms is not that a minimum volume required by other legislation is met, but that the proposal is necessary for the efficient use of the holding. I am persuaded that the proposal is necessary for the efficient use of the appellant's holding due to the mixed nature of the farm and the need to apply slurry to crops when it will be of most benefit, and the increasing prevalence of adverse weather conditions which often preclude the spreading of slurry during the open season.
68. Although the site is located in a coastal flood plain, I have found that the tank must be located in the flood plain for operational reasons. While the height of the tank will provide more capacity than might otherwise be required, this must be balanced against the desire to protect the structure against inundation in an extreme coastal flooding event. As the evidence demonstrates that a 3m tank would prevent pollution of flood water with slurry in such an event, I consider this to outweigh any overprovision of storage capacity in this instance. As ammonia emissions from the tank and associated land spreading are already included within the calculated background levels for Lough Foyle, I am satisfied that the development is not likely to harm nature conservation interests. The use of the tank can be conditioned to ensure that it does not result in additional traffic movements across the Coleraine to Londonderry railway line, preventing prejudice to public safety.
69. As the proposal has been found to accord with the relevant policies, it is acceptable in principle in the countryside under Policy CTY1 of PPS 21. The Council has not sustained its first draft reason for refusal. As none of the Council's and third party's objections to the proposal have been sustained, the appeal on ground (a) succeeds to the extent specified and the deemed planning application is granted, subject to the conditions set out below.
70. As the ground (a) appeal does not grant permission for the entirety of the matters enforced against, the EN will remain in force with amendments to the steps required and it is necessary that I consider the remaining grounds of appeal regarding how the breach is to be remedied and the time period for doing so.

Ground (f) – that the steps required by the Notice exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity caused by any such breach

71. The EN requires that the unauthorised tank is permanently removed along with its materials and rubble and that the lands are levelled, topsoiled, and sowed out with grass. These steps now exceed what is necessary to remedy the breach and they must now be replaced as the lower 3m of the tank can remain and the upper 2m must be removed. Steps (a), (b) and (c) in section 4 of the EN will be replaced with the following new requirement: “Lower the walls of the storage tank to a height of 3 metres in accordance with Drawing No. PAC 1 and permanently remove any materials and rubble from the demolished sections from the site.” The appeal on ground (f) succeeds to that extent.

Ground (g) – that the period for compliance specified in the Notice falls short of what should reasonably be allowed.

72. The EN required the tank to be demolished and the land restored within 84 days (12 weeks) from the date on which the notice takes effect. As the 5m high tank is currently full and would have to be emptied to enable the alterations to its height to be safely completed, the appellant requested additional time to comply with the EN. They stated that not all of the slurry could be spread on the nominated land banks in the remainder of the 2024 spreading season and argued that given the weather to date this year, allowance should be made for further unseasonable wet weather which could delay compliance. They also referred to an agreement with Translink to only cross the railway line 10 times per day which would slow the rate at which slurry could be removed. At the hearing, they asked that the compliance period be extended to the end of the next spreading season, i.e. 15th October 2025.

73. The Council stated that as the tank was constructed from concrete panels, its removal was not considered complex. However, they were open to allowing more time if the tank first had to be emptied. Translink did not accept the need for additional time in light of their safety concerns.

74. I consider that 12 weeks is an unreasonably short time to empty the 5m high tank and make the required alterations to it. As there is insufficient land available to spread all the slurry therein during the current year, an extension into 2025 will be required. However, a period of some 15 months, as suggested by the appellant, would be tantamount to granting temporary permission for the 5m high tank. I judge that a period of 12 months from the date of the appeal decision would allow the tank to be partially emptied in the current season following harvest and fully emptied by summer 2025 and the alterations carried out so that it is ready to receive slurry for the closed spreading season in 2025. A 12-month period will allow for the gradual emptying of the tank, minimising any risks to public safety or the environment and will allow the appellant to plan for the alteration work, allow time for new concrete to cure and ensure that any consents required by other legislation are in place before the tank begins to be filled for the following winter season. The period for compliance is varied to 12 months and the appeal on Ground (g) succeeds to that extent.

Decision

75. The decision is as follows:-

- The appeal on Ground (a) succeeds in respect of the alternative scheme to reduce the tank to 3 metres in height and the deemed planning application is granted, subject to the conditions set out below.
- Steps (a), (b) and (c) in section 4 of the notice are deleted and replaced with “Lower the walls of the storage tank to a height of 3 metres in accordance with Drawing No. PAC 1 and permanently remove any materials and rubble from the demolished sections from the site” and the appeal on Ground (f) succeeds to that extent.
- The period for compliance at Section 4 (d) of the notice is varied to 12 months and the appeal on Ground (g) succeeds to that extent.
- The notice as so varied is upheld.

This decision is based on Drawing No. PAC 1 (Tank Plan, Elevations and Sections) which was received by the Commission on 19th April 2024, a copy of which is appended to this decision.

Conditions

- (1) The storage tank shall be reduced to a height of 3 metres and a floating cover shall be installed in accordance with Drawing No. PAC 1 within 12 months of the date of this decision.
- (2) No development shall take place until there has been submitted to and approved by the planning authority a specification for an alarm system on the tank that will monitor and record the level therein. The alarm system as finally approved shall be installed before the tank hereby approved comes into operation and shall be permanently retained and maintained to the satisfaction of the planning authority. The volume of slurry stored in the tank shall not exceed 2384.5m³. Records of the slurry level in the tank shall be provided to the planning authority on request.
- (3) The tank shall be used solely for the storage of slurry generated on the Shore Avenue holding of the appellant’s farm business. No slurry or digestate shall be imported from elsewhere.
- (4) Slurry from the tank shall be spread only on lands to the west of the Coleraine to Londonderry railway line in accordance with the submitted Nutrient Management Plans. Any land that is no longer available to receive slurry shall be replaced with other land on the western side of the railway.

COMMISSIONER GARETH KERR

List of Appearances

Planning Authority:-	Shane Mathers – CCGBC Planning Sonya Crawford – CCGBC Planning Vincent Mooney – CCGBC Environmental Health Keith Finegan – NIEA Natural Environment Division Neil Jenkinson – DfI Rivers
Appellant:-	Jenny Mawhinney – MBA Planning Stuart Dodds (Appellant's son) Geoff Connell – Agrihand Alan Mains (with regard to the railway line)
Third Party:-	Keith Pollock – Translink Adam Larkin – Gravis Planning Graham Cooke – Burnhead Rural Services

List of Documents

Planning Authority:-	A	Statement of Case and 32 Appendices Causeway Coast and Glens Borough Council
	B	Post-hearing Comments on Appeal Decision 2022/E0036 Causeway Coast and Glens Borough Council
	C	Post-hearing Comments on Soil Analysis NIEA
	D	Post-hearing Comments on Soil Analysis SES
Appellant:-	E	Statement of Case and 12 Appendices MBA Planning
	F	Post-hearing Soil Sample Analysis Results and Review of AQIA MBA Planning
Third Party:-	G	Statement of Case and 7 Appendices Translink
	H	Post-hearing Comments on Appeal Decision 2022/E0036 Gravis Planning on behalf of Translink
	I	Post-hearing Comments on Soil Analysis and Reduced Storage Capacity of Existing Tanks Gravis Planning on behalf of Translink