

Enforcement Appeal Decision

Appeal Reference:	2022/E0033
Appeal by:	Mr Patrick Boyle
Appeal against:	An enforcement notice dated 27 th September 2022
Alleged Breach of Planning Control:	Unauthorised erection of a building and associated underground tank, which is used for the keeping and rearing of pigs being development carried out without the grant of planning permission so required.
Location:	Land at approx. 60m NE of 16 Follum Road, Knockmacarony, Glebe, Rosslea
Planning Authority:	Fermanagh and Omagh District Council
Authority's Reference:	EN/2022/0193 & LA10/2019/0124/CA
Procedure:	Informal hearing on 21 st September 2023
Decision by:	Commissioner Carrie McDonagh dated 7th June 2024

Grounds of Appeal

1. The appeal was brought on Grounds (a) 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).

Claim for Costs

2. A claim for costs was made by the appellant against the Council. This claim is the subject of a separate decision.

Ground (a) and the Deemed Planning Application

3. The breach is described as the 'Unauthorised erection of a building and associated underground tank that is used for the keeping and rearing of pigs.' Prior to the hearing the fifth deemed refusal reason which related to Land Use and Transport was withdrawn. The Council subsequently withdrew the remaining four deemed refusal reasons at the hearing, subject to the imposition of conditions to control the effects of ammonia on natural heritage interests and to mitigate against any unacceptable impacts on residential amenity. Notwithstanding the withdrawal of all their deemed refusal reasons, the Council did not withdraw the Enforcement Notice (EN). They argued this would not be in line with the Council's enforcement procedures. Accordingly, the EN remains within the jurisdiction of the Commission

and the planning merits of the appeal development fall to be considered under the deemed application, in the evidential context provided.

4. Subsequent to the hearing, a letter from the Northern Ireland Environment Agency (NIEA), Natural Environment Division advised that the pause on the use of their 2012 Ammonia Standing Advice “Livestock Installations and Ammonia” (hereafter referred to as the Operational Protocol) had been lifted. The Operational Protocol sets out guidelines for the screening of likely significant effects of a proposal within the 7.5km zone of influence of a designated natural heritage site. Where a development alone contributes less than 1% of the critical level of ammonia then it could be considered for approval, irrespective of whether the pollution levels at the designated site are exceeded. A subsequent letter, dated 19th December 2023, reversed that position advising that the Operational Protocol was no longer to be relied on. Instead, NIEA was to provide competent authorities with case and site-specific advice until such times as a new ammonia strategy and updated standing advice were agreed and in place.
5. NIEA advised that they would use a 0.08% process contribution (PC) which is described as nugatory to inform their response. This is in line with the scientific findings of the Joint Nature Conservation Committee (JNCC) report “Guidance on Decision Making Thresholds for Air Pollution (December 2021(3))”. The PC is the additional pollutant loading to a receptor (e.g. designated site) as a result of a process or development. It is expressed as a percentage of the Critical Level (CLE), defined as “concentrations of pollutants in the atmosphere above which direct adverse effects on receptors, such as human beings, plants, ecosystems or materials, may occur according to present knowledge” (APIS, 2017 cited at UNECE, 2003).
6. On the 1st of March 2024, the Commission received correspondence from the Council advising that NIEA have stated “*that they cannot rule out significant effects for the following designated sites: Slieve Beagh-Mullaghfad Lisnaskea SPA, Magheraveely Marl Loughs SAC and Annachullion Lough ASSI. As a result, the Council would like to adjust the reason for refusal to include these designated areas. The letter went on to advise that, accordingly, ‘The development is contrary to Policy NE01 of the Plan Strategy as it would have a significant effect upon Slieve Beagh-Mullaghfad Lisnaskea SPA, Annachullion Lough ASSI and Magheraveely Marl Loughs SAC and Kilroosky Lough Cluster SAC and no circumstances had been presented which demonstrated that the development was exceptional under NE01’.* This was despite the position taken at the hearing.
7. In response, the appellant provided an updated Odour and Noise Impact Assessment, dated 29 March 2024 which includes an Ammonia Impact Assessment (AIA) including nitrogen deposition levels and is hereafter referred to as the AIA. It concludes that the contribution from the appeal development is below the Decision Making Threshold (DMT) or Site Relevant Threshold (SRT) for both ammonia and nitrogen deposition at all of the designated sites in the vicinity of the shed and its land spreading locations. It states, “*As detailed in the JNCC reports, the cumulative effects of proposals excluded by the SRT will not undermine the achievement of the conservation objectives for the relevant designated sites, and the impact is therefore considered to be “not significant”.* The Council did not take the opportunity to rebut either the appellant’s interpretation of the SRT for the

appeal development or the AIAs overall conclusions, including those in respect of nitrogen deposition.

8. Even though the deemed refusal reason which related to Policy NE 01 'Natural Heritage' was withdrawn by the Council and cannot be reinstated, the issues raised are before me and are discussed in the main body of this decision, in the context of the most recent information available.
9. The main issue in this appeal is if, as the competent authority, the Commission can allow the appeal development, having been satisfied that it will not adversely affect the integrity of the designated nature conservation sites.

Policy Context

10. Section 45 (1) of the Planning Act (Northern Ireland) 2011 (the Act) requires the Commission to have regard to the local development plan (LDP), as far as material to the application, 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.
11. The notice site is in the countryside in the Fermanagh and Omagh Local Development 2030 Plan Strategy (PS), adopted on 16th March 2023. In line with the transitional arrangements set out in Paragraph 3 of the Schedule to The Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended), the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. In this appeal the Fermanagh Area Plan 2007 (FAP) operates as the relevant DDP. In accordance with the subject legislation, any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS. In accordance with paragraph 1.9 of the Strategic Planning Policy Statement (SPPS), as the Council has now adopted a PS, the previously retained policies such as the Planning Policy Statements (PPSs) have now ceased to have effect within this particular Council area.
12. In the FAP, the EN site is located in the countryside and outside any designations. Policy Nat Env 3 "Habitat Protection" requires that the Department will pay particular regard to the need to safeguard the natural and semi-natural habitats in Fermanagh. Policy Nat Env 5 "Protection of Loughs and Rivers" seeks to minimise the impact of new development on the loughs and rivers and, in assessing proposals for new development, will pay particular regard to the likely effects on visual amenity, conservation interests, recreational potential and water quality.
13. In the PS, NE01 'Nature Conservation' is the most relevant policy. It sets out policy for development affecting three tiers of natural heritage assets: international, national, and locally important. It provides support for development that, either individually, or in combination with and/or proposed plans or projects, is not likely to have a significant effect on a SPA, SAC or Ramsar Site. Relative to these, the Council refers to the international designations as per paragraph 6.
14. Policy NE01 continues that where a development is likely to have a significant effect (either alone or in combination) or a reasonable scientific doubt remains, the Council shall make an appropriate assessment (AA) of the implications for the site in view of the site's conservation objectives. Only after having ascertained that it

will not adversely affect the integrity of the site can the Council agree to the development and impose appropriate mitigation measures in the form of planning conditions or a planning agreement.

15. The Council also refer to Annachullion Lough ASSI. Policy NE01 states that development affecting an ASSI will only be permitted where:
 - a) it is not likely to adversely affect the integrity of the area, including the value of the site to the habitat network or the features for which it has been designated; or
 - b) any such adverse effects are clearly outweighed by social, environmental or economic benefits of national importance. In such cases, appropriate mitigation and/or compensatory measures will be required.
16. Policy IB06 “Agricultural and Forestry Development” states that a proposal for intensive farming or animal husbandry must demonstrate that it does not result in any significant adverse environmental effects, particularly through increased ammonia emissions. Ammonia (NH³) is a gas which is emitted into the air because of farming activities such as the housing of livestock, the storage and spreading of animal manures and slurries and the use of chemical fertiliser. Air pollution related to ammonia, and the associated nitrogen deposition, is known to have a damaging impact on sensitive habitats, wider biodiversity and ecosystem resilience. The evidence of both parties is that Policy IB06 sits alongside the provisions of Policy NE01, with the latter a more onerous test in respect of ammonia. There is no conflict between the policies in the DDP and those in the PS.

Description of site

17. The notice site is located in a rural area, 5 miles west of Rosslea and 19 miles southeast of Enniskillen. Extending to an area of 0.075 hectares, the appeal building is bounded by fields to the north, east and west with the remainder of the farmyard, in which it is located, to the south and southwest. It is constructed from tin cladding, with wall panels coloured green and the roof coloured grey. Three ventilation fans/inlets and four chimneys sit on the building’s four metre high pitched roof. The building measures approximately 44.8 metres long, 12.7 metres wide, and has a footprint area of 569 sqm. Internally, there is a slatted floor over an underground concrete slurry storage tank. It is subdivided into seventeen animal holding pens (plus an additional three sick animal pens). A central access passage runs from front to back, leading to an external access door in the western elevation.
18. A 3 metre wide and 9.8 metre high galvanised steel feed bin is situated to the west of the building. A second door, in the building’s southern elevation, leads to an animal loading bay, which connects it to the farmyard. The loading bay is designed with concrete walls and floor and sits elevated from the main farmyard (to the south) and slopes in a northerly direction towards the appeal building.
19. The loading bay is also utilised by an agricultural building to its west (south of the appeal building). As it was built prior to 16th November 2015, it has a Certificate of Existing Lawful Use or Development, dated 1st April 2021, for a ‘pig shed’ (LA10/2020/1174/LDE). Further buildings, in use as cattle sheds and for housing of machinery and animal feed are located in the southern section of the farm. The farm complex is accessed from a laneway, situated between one of its constituent road frontage sheds and the appellant’s dwelling at 16 Follum Road (60 metres to the southwest). A dwelling, (10 Follum Road) 130 metres southwest of the notice site is in the control of the appellant. A road frontage dwelling (8 Follum Road) is

located 260 metres to the southwest. Further dwellings are located 140 metres to the east (29 Follum Road) and between 185-290 metres to the southeast of the appeal building.

The Appeal Development including its Ammonia Emission Rates

20. The appeal development houses 1000 weaner pigs (up to 30 kilos in weight). The waste generated by the pigs is captured via a slatted floor and held in a below ground slurry storage tank. The dimensions and documentation for the tank are in accordance with the requirements of the Nutrient Action Programme Regulations (Northern Ireland) 2019 (NAPR). The Drainage Assessment also demonstrates that all washings and contaminated run off from the loading area is directed into the underground tank.
21. The AIA uses AERMOD Dispersion Modelling to predict air and odour pollutant concentrations. The model utilises emission factors for ammonia levels taken from the Environment Agency January 2013 v5 document "Pollution Inventory Reporting - Intensive Farming Guidance Notes". The emission rates used and the corresponding total emission rates (which are the amount of pollutant leaving the building each second) are set out in Table 14 thereof "Concentrations per Building".
22. For weaner pigs, Table 14 identifies an odour emission factor of 6 ou/s per animal, which equates to a total odour emission rate of 6000 ou/s for the appeal building (based on 1000 animals). Specifically for ammonia, the appellant applies an emission factor of 0.29/kg yr/per animal (weaners) resulting in a total ammonia emission rate of 0.009 g/s for the appeal building. The emission rate is then divided by the number of emission points (fans) to obtain the emission value for each source. The three ridge ventilation fans equate to an odour emission rate per fan of 2,000 ou/s and 0.0031g/s ammonia per fan as set out at Table 15 "Emission Rates for Each Stack". Detail on the stack emissions velocity for fans is found in Table 17 "Ventilation Rates for Fan". Each fan has a stack diameter of 0.82m and a cross sectional area of 0.528m². The volume flow is shown at 2.78m³/s. As a conservative estimate, the fans are modelled with a volume flow of 10,000m³/hr (50% capacity).
23. As slurry is collected in the appeal building's underground tank and deposited on the available farmland, the effects of this land spreading must also be modelled in any assessment of ammonia emissions. The appellant's "Nutrient Management Plan for the Use of Pig Slurry - Year 2020" (NMP) at Annex 14 shows the development generates 645 tonnes of slurry per year (t/yr), spread over 37.11 hectares in three landbanks. The NMP contains a current livestock nitrogen loading report and the grid references, maps and the volume of slurry that each landbank can receive per year.
24. The slurry spreading uses the trailing shoe method, which I am advised is a spreading requirement introduced within the NAPR. This form of low emission slurry spreading equipment (LESSE) is used to separate the crops, so the manure can be deposited in a thin strip beneath the shoots rather than spreading it through the air. Within Table 18 of the AIA titled "Emission Rates for Land Spreading" this technique utilises a factor of 0.27kg.NH³/tonne. Based on the 645t/yr amount spread (as set out in the NMP), the AIA calculates the total ammonia emissions from the appeal development's associated land spreading at 174.15kg/yr.

25. Within Table 19 “Ammonia Emission Rates per m²” the total ammonia emission factor is divided equally by the field area on which it is spread (37.11 hectares) to calculate the ammonia emissions per m². The annual emission rate is 1.49 x 10⁻⁸ g/s-m². This is used in the modelling and is based on four applications per year, between February and September, based on a quarter of the total digestate per application.

Nature Conservation Designations and Nitrogen Loads

26. Relative to this appeal, there is a concurrent planning application (LA10/2020/1264/F) for the appeal development still with the Council for determination. It seeks “Retention of 1 No. pig shed with underground tank, 1 No. feed bin and associated site works”. An Air Quality Impact Assessment, dated 24th November 2020, formed the basis of a draft Habitats Regulation Assessment (dHRA) undertaken by Shared Environmental Services (SES). The dHRA dated 11th August 2021, includes information on the nature conservation designations within 7.5km of the appeal development.
27. The internationally designated sites raised by the Council as being impacted by the appeal development are set out at Table 1 below. The approximate distances to the appeal site, are from Table 23 of the AIA.

Table 1: International Nature Conservation Designations (and their constituent ASSIs) within 7.5km of the Appeal Development Locations

SPAs	SACs		
	NI	ROI	Constituent ASSIs within SACs
Slieve Beagh-Mullaghfad Lisnaskea (1.33km)	5.7km west of Slieve Beagh SAC/Ramsar (Landbank Map 2 only)		
	Magheraveely Marl Lough (within 4.53km)		Annachullion Lough (within 4.53km) Knockballymore Lough (within 6.01km) Drumacrittin Lough (within 6.52 km)
Slieve Beagh (ROI) (within 6.48km)	Magheraveely Marl Lough (within 4.53km)	Kilroosky Lough Cluster (within 4.73km)	Cross Border Burdautien Lough (within 5.11km) Summerhill Lough- (within 5.18km) Kilroosky Lough (within 5.5km)

28. The three landbanks (detailed with the NMP) are also within 7.5km from designated sites. The relative distances as set out in SES’s dHRA are as follows:
- NMP Map 1 comprising of 4 fields. The closest field is 2.3km north of Magheraveely Marl Lough SAC and Kilroosky Lough Cluster SAC and within 7.5km range of Slieve Beagh SPA (ROI).
 - NMP Map 2 comprising of 19 fields, one of which is identified with no pig slurry spreading. The closest field is 3.5km to Slieve Beagh SPA (ROI) and 5.7km west of Slieve Beagh SAC/Ramsar (not within 7.5km of appeal shed).
 - NMP Map 3 which comprises of 19 fields surrounding the farmyard in which the appeal shed is located. No pig slurry spreading takes place in 6 fields.

Of those remaining, the closest is 1.3km south of Slieve Beagh-Mullaghfad Lisnaskea SPA and 4.8km northwest of closest ASSI Lough within Magheraveely Marl Loughs SAC and Kilroosky Lough Cluster SAC.

29. NIEA are the statutory nature conservation authority in Northern Ireland (NI). They refer to the report "Air Pollution Trends Report 2023: Critical Load and Critical Level Exceedances in the UK". It shows that in NI all SAC's and SPA's had nitrogen deposition rates exceeding their Critical Load (CLo) i.e. the quantity of pollutant deposited from air to the ground and 99.5% of nationally designated ASSI's had at least one of their feature habitats or species where the nitrogen deposition rates are exceeded.
30. Slieve Beagh-Mullaghfad Lisnaskea SPA is the closest European site, located south east of the appeal building. The qualifying feature of the forest is the *hen harrier*, a priority 1 European Protected Species. It is supported by a habitat of dwarf shrub heath, blanket bog and grassland. The feature objectives, as set out in the dHRA, include the maintenance or enhancement of the population, the maintenance or enhancement of the range of habitats utilised by the qualifying species and to ensure there is no significant disturbance of the species.
31. The Slieve Beagh-Mullaghfad Lisnaskea SPA overlaps with the Slieve Beagh SAC and Ramsar. The SAC is relevant in the context of the slurry spreading only insofar as its proximity to landbank 2. *Natural dystrophic lakes and ponds* are its designated site features. NIEA advise the SACs CLo is 3kg N/ha/yr, but it has been exceeded by 11.4kg N/ha/yr. The Slieve Beagh-Mullaghfad Lisnaskea SPA also adjoins Slieve Beagh SPA, which is located 6.48km south west of the appeal building. As it is within the Republic of Ireland (ROI), NIEA do not provide specific information on its CLo.
32. Magheraveely Marl Loughs SAC consists of six lakes, each designated as an ASSI. The Marl Loughs are low-lying in the catchment of the River Finn and relatively low in nutrients, high in calcium and have good water quality. These types of wetlands are rare due to their sensitivity to pollution. Exceedence of nitrogen deposition can favour the growth of competitive plants and lead to an increase in tall graminoids and a decrease in bryophytes. Magheraveely Marl Loughs SAC has four qualifying features; one species, *white-clawed crawfish* and three habitats. The principle habitat features are *hard oligo-mesotrophic waters with benthic vegetation of Chara formations* and *alkaline fen*. Of secondary interest is *calcareous fen with cladium mariscus and species of the caricion davallianae*. The site's conservation objective is to maintain (or restore where appropriate) each to favourable condition.
33. NIEA provided a CLo figure for the *alkaline fen* within Magheraveely Marl Loughs SAC of 15kg N/ha/yr. This is currently exceeded by 0.5kg N/ha/yr. Three of the ASSIs within the SAC are within NI; Annachullion Lough is the closest to the notice site, located to the southeast, Knockballymore Lough is to the south, with Drumacrittin Lough located east of the notice site. Their listed site feature is *fens* with a CLo of 10kg N/ha/yr. This is being exceeded by 4.56kg N/ha/yr, 5.82 kg N/ha/yr and 5.68kg N/ha/yr respectively.
34. The remaining three ASSIs that make up Magheraveely Marl Loughs SAC (Burdautien, Summerhill and Kilroosky Loughs) are within the corresponding Kilroosky Lough Cluster SAC (ROI). It also contains Dummy's Lough ASSI

however, it is more than 7.5km from the appeal development. The loughs within Kilroosky Lough Cluster SAC have the same features of interest in terms of their classic marl lake water chemistry and extensive calcicole plant communities. As they are located in ROI, NIEA have not provided CLo information however, within the dHRA, SES refer to its feature (*alkaline fens*) having a CLo of 15 N/ha/yr. At Kilroosky Loughs Cluster SAC the average background of nitrogen deposition is 20.7 kg/N/ha/yr.

35. NIEA also refer to Round Lough and Lough Fadda ASSI, which are within 4.38km of a land spreading location. Their site feature is *fens*, with a CLo of 10kg N/ha/yr. This is being exceeded by 11.28kg N/ha/yr. Cullentra ASSI is within 4.69km of a land spreading location and contains a *wet woodland*, which has a CLo of 5kg N/ha/yr. The background level indicates an exceedance of 31.96kg N/ha/yr.
36. In summary, in all the designated sites within 7.5km of the appeal development, the ammonia exceedance is consistent with the regional position highlighted in the “NI Environmental Statistics Report 2023” referred to by NIEA. It states that 100% of SACs, 100% of SPAs and 98.6% of ASSIs in NI had ammonia concentrations greater than 1 ug m³ (the long term annual average Critical Level for lichens and mosses and for eco systems for which they are important). Furthermore, 14.8% of SACs, 14.3% of SPAs and 12.8% of ASSIs in NI have ammonia concentrations greater than 3 ug m³ (the long term average Critical Level for higher plants including heathland, semi-natural grassland and forest ground flora). That 2021 report details a continuing rise in total ammonia emissions in NI to 32 kt.
37. At the hearing, NIEA referred to the “Future Operational Protocol to Assess the Impacts of Air Pollution – Call for Evidence”. This aimed to gather evidence prior to the planned review of the Operational Protocol by an incoming Minister of the NI Executive. It highlights that, if PC thresholds are used, they must be supported by the best available scientific knowledge in the field and leave no room for doubt about environmental effects. This is reflected in case law, which highlights that threshold-based approaches should be based on logical and empirical grounds. As previously referenced, the document includes two options involving a de-minimis or nugatory Decision Making Threshold (DMT), described as a contribution which can properly be ignored, irrespective of other considerations.
38. The ‘Call for Evidence’ document also refers to SRT, which enables specific circumstances at the site concerned to be taken into account and offers some flexibility. This threshold considers the risk of proliferation and local contribution from the source group (e.g. agriculture, transport etc) at the site. The SRT can range from 0.1% to 1%. If a proposal contributes less than the SRT, it is ‘screened out’ of further assessment (low risk) on the basis that it will not undermine a designated site’s conservation objectives.

The Final Position of the Council

39. In addition to their dHRA conclusion that the pig housing alone would not have a significant adverse effect on the designated sites, SES’s concerns in respect of the land spreading were addressed by the change from the use of the broadcast plate method for slurry spreading to the trailing shoe technique. They accepted the emission factor used in the AIA, which is half of that of the broadcast method (0.55 kg/NH₃/Tonne). They confirmed that their dHRA could be utilised as a reference tool (having cognition of any changes required due to the use of the trailing shoe)

for the purposes of the AA, which they argued is necessary in the context of this appeal in respect of the Magheraveely Marl Lakes in particular.

40. As previously outlined, throughout the appeal process, the advice given by NIEA has changed. My consideration is based on the most up to date position.
41. As set out in Paragraph 6, NIEA's consultation response dated 8th February 2024 is based on an interim case by case approach to assess the impacts of nitrogenous air pollution, specifically ammonia emissions. The second bullet point states -

“Three of the PCs within Table 26 of the AQIA exceed the De Minimis Threshold of 0.08% of the CLe. A Site Relevant Threshold of 0.34% of the CLe has been determined based on development density within 5km of the facility. No designated sites PCs exceed this threshold; therefore, it was concluded that no further assessment was required.
42. The NIEA response states that their approach is based on the Decision Making Project reports published by the JNCC and reflect the best scientific evidence available. The JNCC report, as referred to previously at paragraph 5, provides an evidentiary basis for the application of DMTs to determine whether an assessment in combination with other plans and projects is required, or, whether the risk from air pollution related impacts is sufficiently small that no further assessment effort is necessary. Based on modelling, the JNCC suggests a nugatory level of significance of 0.08%, below which associated effects can properly be ignored for the purpose of decision-making.
43. Table 26 of the AIA identified the following three sites with PC's above 0.08%:
 - Slieve Beagh-Mullaghfad Lisnaskea SPA with a PC of 0.34%;
 - Annachullion Lough ASSI with a PC of 0.1%; and
 - Magheraveely Marl Loughs SAC with a PC of 0.1% (Annachullion Lough has the highest PC of the six ASSI Loughs which form part of the SAC).
44. Within Magheraveely Marl Loughs SAC, Annachullion Lough has the highest PC at 0.1%. The same PC figure is therefore attributed to both the ASSI and the SAC. As the PC of 0.1% of CLe is above the nugatory DMT, the SRT threshold of 0.34% is engaged. The most up to date response from NIEA, informed by the best scientific evidence as set out in their Call for Evidence, is that no designated sites PCs exceed this 0.34% threshold therefore no further assessment was required.
45. Specifically in respect of Slieve Beagh-Mullaghfad Lisnaskea SPA the AIA identifies the CLe guideline as 1ug m^3 , (for more sensitive vegetation such as lichens and bryophytes), which NIEA confirmed was applicable at the hearing. The background level is 1.59ug m^3 , with the highest PC over a 5 year period of 0.0034ug m^3 . The Predicted Environmental Contribution (PEC) of 1.593ug m^3 equates to a 0.34% PC on Slieve Beagh-Mullaghfad Lisnaskea SPA. However, SES refer, in their dHRA, to the Waddenzee Ruling (C-127/02 paragraphs 46-48) and how the significant nature of the effect is linked to the site's conservation objectives. Where a project has an effect on that site, but it is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned.
46. Based on the dHRA and the advice of SES and NIEA at the hearing, within the SPA *dwarf shrub heath* is a supporting habitat for the *hen harrier*. SES affirmed that the

conservation objectives for Slieve Beagh-Mullaghfad Lisnaskea SPA do not identify ammonia or nitrogen deposition as a threat to its site's integrity. On this basis, they advised its features are not as sensitive to ammonia as other features under consideration in this appeal. The condition of the hen harrier within the SPA is favourable and the conservation objectives are not undermined. Combined with NIEAs latest response (that confirms that a SRT of 0.34% of the CLe has been determined and no further assessment was required) I find that the Council's concern in relation to impact on Slieve Beagh-Mullaghfad Lisnaskea SPA cannot be sustained.

47. NIEA also recommended that the Planning Authority should consult with the Department for Housing, Local Government and Heritage (the relevant authority in the ROI), in respect of Kilroosky Lough Cluster SAC and Slieve Beagh SPA. However, SES screened out Slieve Beagh SPA (ROI) at stage 1 of their dHRA on the basis of the PC of 0.03% being "negatory" concluding that there can be no conceivable effects on the SPA. In respect of Kilroosky Lough Cluster SAC, the AIA states the background level of ammonia is 2.14ug/m³. The PC from the appeal development is stated as 0.07%. In addition to this being below the DMT threshold of 0.08%, the three Loughs referred to within Kilroosky Lough Cluster SAC are also within Magheraveely Marl Loughs SAC and are considered comprehensively as part of that SAC grouping. Accordingly, I have not been provided with any persuasive evidence to suggest a detailed assessment by the ROI nature consultation authority would alter my conclusions that there are no significant effects on these cross-border sites given their PC's of 0.03% and 0.07% are below the DMT threshold. Accordingly, I find the appeal development will not undermine the integrity of Slieve Beagh SPA or Kilroosky Lough Cluster SAC given the PCs on these designated sites do not exceed the de-minimis threshold of 0.08%.

Nitrogen Deposition from the Appeal Development

48. The AIA includes an assessment of the associated nitrogen deposition from the appeal development. The dry deposition flux (ug/m²/s of ammonia) is calculated using "Technical Guidance on Detailed Modelling Approach for an Appropriate Assessment for Emissions to Air, AQTAG06". The predicted ground level of ammonia is multiplied by the relevant deposition velocity (0.02 m/s for short vegetation) as set out within Table 27 "Conversion Factors". The dry deposition is then multiplied by the conversion factor (260 as provided in the guidance) to convert the levels of kg.N/ha/yr. The results in Table 28 "Conversion of Highest NH3 Results" show the maximum PC of 0.0175kg.N/ha/yr on Slieve Beagh-Mullaghfad Lisnaskea SPA. The next highest is 0.0054kg.N/ha/yr at Annachullion Lough ASSI. The SRT for annual mean nitrogen deposition for woodland as 0.057kg.N/ha/yr and 0.04kg.N/ha/yr for grassland. Critically, the AIA concludes that the contribution from the appeal development is below the SRT for nitrogen deposition at all designated sites in the vicinity of the appeal development. In the evidential context of this appeal and in the absence of any rebuttal from the Council, I accept that the nitrogen deposition levels are not harmful to the protected sites and no further assessment on nitrogen is required.
49. In summary, the DMT for ammonia deposition has changed throughout the consideration of this appeal from a PC of <1% to 0.08% as per NIEAs interim case by case approach. The conservation objectives for Slieve Beagh-Mullaghfad Lisnaskea SPA confirm that its identified species (hen harrier) is not sensitive to ammonia. While the PCs for Annachullion Lough ASSI and Magheraveely Marl

Loughs SAC are 0.1%, which is above the nugatory DMT, their SRT of 0.34% is not exceeded. I will now turn to consider the effect on habitats in line with the legislative requirements.

Habitats Regulation Assessment

50. The Planning Appeals Commission are a competent authority in accordance with Regulation 5 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) in 2015 (Conservation Regulations). These legislative provisions require that decision makers are to authorise activity only if they are certain it will not adversely affect the integrity of a designated site. I must therefore be satisfied that no reasonable scientific doubt remains as to the absence of adverse effects on site integrity. This requirement derives from Article 6(3) of EU Directive 92/43/EEC (6), The Conservation of Natural Habitats and of Wild Flora and Fauna (hereafter referred to as the Habitats Directive). It establishes the requirement that any plan or project, likely to have a significant effect on a European site shall be subject to AA of its implications for the site in view of the site's conservation objectives.
51. There is no dispute that sufficient information is before me to conduct such an assessment. I have relied on the information in the evidence at appeal including: the dHRA undertaken by SES, including references to the air pollution information system (APIS) and the NIEA and Water Management Unit responses. The findings of the AIA can, in the context of this appeal, be considered as complete, precise and definitive for the purposes of the assessment in line with the Habitats Directive.
52. A precautionary approach to decision-making for designated sites is required under the Habitats Regulations where case law has established that first, one must consider whether the trigger for AA is met as significant adverse effects on the designated sites are likely. An effect is 'likely' if it cannot be excluded on the basis of objective information. An effect is 'significant' if it undermines the site conservation objectives.
53. Whilst a precautionary approach may be required to an assessment of the effects of ammonia deposition on the designated sites, no legislative framework requires the exclusion of all doubt. The Habitats Regulations requires the exclusion of reasonable scientific doubt. Doubt which is unscientific or unreasonable need not constrain decision-making. The Courts have also recognised that there is no such thing as absolute certainty. Instead, decision makers need to identify reasonably foreseeable risks, on the basis of information that can reasonably be obtained and put in place a legally enforceable framework with a view to preventing those risks from materialising. Furthermore, the Courts have also established that, whilst a risk is sufficient to constrain development under the Habitats Regulations, there must be credible evidence that there is a real, rather than a purely hypothetical risk, which must be considered.
54. Water Management Unit, Agricultural Regulations Team, have confirmed that the appeal development accords with the construction standards and other requirements specified in the NAPR. Combined with my observations, I am satisfied that there are no significant risks from dirty water passing to the designated receptor sites.

55. The housing, slurry storage and aerial emissions of ammonia from land spread are a pathway leading to the potential degradation of aquatic habitats through a deterioration in water quality. I consider the trailing shoe method to be a compensatory measure that is designed to avoid or reduce the harmful effects of the project on the designated sites. In line with case law (including Sweetman), such measures can only be considered at Stage 2 of AA.
56. As previously set out, the appeal development's PC on Kilroosky Lough Cluster SAC does not exceed the DMT. Ammonia is not an identified threat to the conservation objectives of Slieve Beagh-Mullaghfad Lisnaskea SPA. Annachullion Lough is the only constituent Lough within Margherveely Marl Loughs SAC which has a PC in excess of the 0.08% DMT. Notwithstanding, the SRT on either designated site is not exceeded, I consider that both require further assessment based on the precautionary approach required by the Habitats Directive and given the SRT is based on an interim case by case assessment.
57. Authorisation may only be given on condition that the appeal development does not have a lasting adverse effect on the integrity of the Magheraveely Marl Loughs SAC and its constituent Loughs, including Annachullion Lough. In determining whether the integrity of the site is affected, the essential questions posed are - why was the site designated and what are the site's conservation objectives?
58. The landbank locations identified on NMP Maps 1 and 3 are potential pathways to the group of Marl Loughs. Annachullion Lough, Knockballymore Lough, and Drumacrittin Lough are ASSIs exclusively within NI, with Burdautien Lough ASSI, Summerhill Lough ASSI and Kilroosky Lough ASSI occupying a cross border position. As previously set out the CLo is exceeded for each.
59. The dHRA provides evidence in respect of the grade of each of the four features and their recorded condition within the six ASSI's and the background ammonia concentrations. While the PC references contained therein are no longer applicable as the broadcast slurry spreading method has been replaced, the PC from the development, including land spreading at the designated locations can be found in Table 26 of the AIA. This detail is combined and set out below in Table 2.

Table 2: Appellant's PC in context of condition of features within Magheraveely Marl Lough SAC component ASSIs

ASSI Name (AIA location)	ASSI Site Features as detailed in dHRA				Background Ammonia Concentration ug/m ⁻³	PC % combined of CLe
	Hard Waters with benthic Vegetation	White-clawed crayfish	Alkaline Fen	Calcareous fens		
Grade (A-D)	B	B	B	C		
Drumacrittin Lough (17)	UF:UC	UF:UC	UF:UC	UF:UC	3.23	0.08
Summerhill Lough (12)	UF:UC	UF:UC	UF:UC	UF:UC	3.4	0.06
Kilroosky Lough (13)	Declining	Favourable	UF:No change	UF:No change	3.4	0.06
Knockballymore Lough (15)	UF:UC	UF:UC	Favorable: Maintained	Favourable	3.4	0.04

Annachullion Lough (9)	UF:UC		UF:UC	UF:UC	4.88	0.1
Burdautien Lough (11)	Declining		Favourable: Maintained		3.4	0.07

Key: Unfavorable: UF, Unclassified : UC.

60. Within the SAC, *White Clawed Crayfish* are only recorded in four of the six Loughs; they are not recorded in Annachullion and Burdautien Lough ASSIs. The habitat of *Calcareous fen with cladium mariscus and species of the caricion davalliana* is also not present in Burdautien Lough. The *Alkaline fen* is in favourable condition in two of the six loughs and others have a condition assessment as either 'unfavourable unclassified' or 'no change'. In two ASSIs, Kilroosky and Burdautien Loughs, the *hard oligo-mesotrophic waters with benthic vegetation of chara formations* are noted as declining.
61. Within the dHRA, SES state that feature site specific advice should be sought for the Magheraveely Marl Loughs. The Loughs are described as one of the best UK examples of *hard oligo-mesotrophic waters* and must be assessed in line with the site's conservation objectives. Nitrogen deposition is listed under main threats, pressures and activities and one of '*the most likely factors that are either affecting Magheraveely Marl Loughs, or could affect it in the future. Excess nitrogen deposition can favour the growth of competitive plants and lead to changes in ecosystem structure or function and to a reduction in biodiversity*'. The objectives for the feature include that there is 'No change in the lake hydrology outside normal seasonal fluctuations' and they seek to 'Maintain the characteristic low nutrient status and high calcium concentration of the lake waters'.
62. The two ASSI's which have *hard oligo-mesotrophic waters* categorised as declining (Burdautien and Kilroosky Lough) are over 5km from the notice site. Kilroosky Lough ASSI has three other listed features. Despite SES raising the habitat sensitivity at the hearing, NIEA did not alert me to any additional site-specific matters that I need to take account of at any time during the appeal process.
63. The PCs from the development on Burdautien and Kilroosky Lough ASSIs are 0.06% and 0.07% respectively. They are therefore below the DMT defined in an evidential and scientific context by the JNCC. I have no persuasive evidence that I should deviate from that scientific basis or that further assessment is required in the absence of advice from NIEA. I am satisfied that no reasonable scientific doubt remains as to the absence of adverse effects and the appeal development will not adversely affect the integrity of Magheraveely Marl Loughs SAC.
64. The dHRA refers to three qualifying habitats within Annachullion Lough with each categorised as 'unfavourable: unclassified'. As per Table 25 of the AIA, over the recorded years since 2015, the average PC was 0.0007 ug/m⁻³. While the highest figure of 0.0010 ug/m⁻³ was used for the % PC calculation it occurred only once, in 2017. Combined, the infrequency of this occurrence, the absence of exceedance of the di-minimis PC in other successive years and the ASSI's PC of 0.1% being significantly less than the SRT, I have no persuasive evidence that reasonable scientific doubt remains that the levels are likely to have a significant effect on the conservation objectives for Annachullion Lough.
65. NIEA advise that in NI, all SACs and SPAs have nitrogen deposition rates exceeding their CLe and ammonia concentrations greater than 1 ug m³. In the

absence of a moratorium on livestock installations which give rise to ammonia and nitrogen emissions and in the context of an interim case by case approach based on up-to-date scientific evidence in which a SRT of 0.34% is currently set by NIEA, I am not persuaded, given the above circumstances, that planning permission should be withheld.

66. In the evidential context of this appeal, I am satisfied beyond all reasonable scientific doubt that the appeal development does not have any significant adverse effect on the integrity of any European designated site subject to the mitigation measures set out below. This view aligns with that of NIEA, as the statutory nature conservation authority. For the reasons set out above, the appeal development is in accordance with the local development plan.
67. Given my conclusions above, the imposition of a condition would be necessary to ensure adherence to the maximum holding capacity of the appeal building of 1000 weaner pigs (maximum weight of up to 30 kilos). A planning condition would also be necessary to ensure the continuing use of the trailing shoe as a LESSE mitigation measure and the associated ammonia emission rates based on the detail provided regarding land spreading within the NMP given each are control parameters within the AIA.
68. The imposition of a condition requiring that all slurry from the appeal development is utilised as per the current NMP, including the control of land-spreading to the locations identified therein, is necessary as the PC's within the AIA are based on these locations. In addition, a condition is required to require the Council to authorise any updated or altered version of the NMP. This would also be necessary as the amount of ammonia can be affected by factors including the quality of the slurry, stock levels and the amount of land available (which can change over time). The condition would control any deviations from the procedures or land spreading locations currently in use and set out in the NMP.

Residential Amenity

69. The Council's Environmental Health Department (EHD) made reference to complaints arising from the appeal development. The appellant's Odour and Noise Impact Assessment includes a cumulative assessment which incorporates the farm's cattle sheds and the LDE shed (modelled with a higher odour emission factor for fatterer pigs). Odour dispersion modelling assesses the max 1 hr odour levels at the five closest residential receptors, in particular, the worst-case scenario receptors R4 (10 Follum Road) and R1 (29 Follum Road). The model incorporates an efflux temperature of 25 degrees and a corrected exit velocity of 5.26m/s from the ridge fans. No exceedances of the odour benchmark target for intensive livestock rearing of 3 ouE/m³ and target value of c98, 1 hour ≤3 ouE/m³ are recorded. The maximum impact descriptors for the dwellings are categorised as 'slight' in line with the Institute of Air Quality Management's guidance.
70. Given these conclusions and subject to the imposition of suitable conditions of control, I am satisfied that the appeal development does not result in an unacceptable effect on residential amenity through noise and odour.
71. A condition is necessary to control the operation of the baffles below the stack of the extract fans in order to ensure that there is no escape of air and associated dispersion of odours from the chimney if the fans are turned off. A condition is also

necessary to provide for the assessment of odour emissions, at the appellant's expense, if any reasonable complaint arises from nearby properties.

72. The measures set out within the appellant's Farm Management Plan, along with its constituent management plans for odour, flies and vermin are necessary to protect residential amenity and a condition should be imposed accordingly.
73. Subject to these conditions, reading both the DPP and the PS together, the appeal development is in accordance with the LDP. The ground (a) appeal shall succeed and planning permission is therefore granted for the retention of the building and associated underground tank, which is used for the keeping and rearing of pigs.
74. As the appeal development is permitted and the EN is quashed, there is no need to consider ground (g) of the appeal.

Conditions

1. The total number and type of animals within the agricultural shed hereby permitted shall not exceed 1000 weaner pigs (up to a maximum weight of 30 kilo).
2. There shall be no deviation from the trailing shoe method of low emission slurry spreading technique (LESSE) and total ammonia emissions from land spreading referred to in the Irwin Carr Odour and Noise Impact Assessment dated 29th March 2024 (Table 18) without the prior written approval of the Council.
3. All pig slurry disposal methods, including loads, land-spreading locations and mitigation for the appeal development shall be adhered to as detailed in the Nutrient Management Plan for the Use of Pig Slurry dated 2nd December 2020, unless the Council agrees in writing to any alteration.
4. Any updated or altered Nutrient Management Plan (NMP) must be submitted to the Council for written approval. The slurry must be analysed by a certified laboratory to calculate nutrient loadings. The approved NMP shall be maintained by the appellant and made available for inspection each year for at least 5 years to ensure sustainable locations for the slurry spreading are retained. Any requests for deviation must be submitted to the Council for written approval prior to any alterations commencing.
5. The building's existing mechanical ventilation systems as detailed within the Irwin Carr Odour and Noise Impact Assessment dated 29th March 2024 (Table 17) shall be retained unless otherwise approved by the Council. The baffles below the stack of the extract fans shall operate to ensure no escape of air from the chimney if the extraction fans are turned off.
6. The building hereby approved shall operate in accordance with the Farm Management Plan (Including Odour Management Plan, Noise Management Plan, Fly Management Plan and Vermin Control Policy) dated 2nd August 2023 as fully implemented and adhered to. Any requests for deviations must be submitted to the Council for prior written approval prior to any alterations commencing.
7. Within 4 weeks of a written request from the Council, following a reasonable odour complaint from the occupant of a dwelling not associated with the development,

the appellant shall, at his/her expense, employ a suitably qualified and competent person to assess the odour emission from the development at the complainant's property, and provide a suitable written assessment. Details of the odour monitoring methodology shall be submitted to the Council for written approval prior to any monitoring commencing.

Decision

The decision is as follows: -

- The appeal on Ground (a) succeeds and planning permission is granted subject to the conditions outlined above, and
- The Enforcement Notice is quashed.

COMMISSIONER CARRIE McDONAGH

List of Appearances

Planning Authority: -	<p>Mr Martin McCarroll, Fermanagh and Omagh District Council Mr Colin Harkness, Fermanagh and Omagh District Council Ms Jill Crawford, Environmental Health Department, Fermanagh and Omagh District Council Mr Brian Fury, Environmental Health Department, Fermanagh and Omagh District Council Mr Keith Finegan, Natural Environmental Division, Department for Agriculture, Environment and Rural Affairs (DAERA) Mr Malachy Kearney, Shared Environmental Services</p>
Appellant: -	<p>Mr Conor Fegan, Barrister at Law instructed by Clyde Shanks Mr Gavin McGill, Clyde Shanks Limited Mr Christy Carr, Irwin Carr Consulting Mr Philip Marshall, Henry Marshall Brown Architectural Partnership Mr Patrick Boyle, Appellant Ms Susanna Boyle, Wife of Appellant</p>

List of Documents

Planning Authority: -	<p>Fermanagh and Omagh District Council "A1" Statement of Case including Appendices. "A2" Copy of Negative Screening for Environmental Impact Assessment. "A3" Response dated 9th November 2023, to PAC Letter of 17th October 2023 re NIEA letter on operational Protocol. "A4" Letter of 19th December 2023, from Liz Loughran of NIEA titled "Planning Consultations for Agricultural Developments". "A5" Letter received 1st March 2024 (dated 19th January 2024), enc NIEA response dated 8th February 2024.</p>
Appellant: -	<p>Mr Patrick Boyle "B1" Statement of Case including Appendices. "B2" Letter dated 3rd October 2023, providing NIEA letter of 29th September 2023 titled "Planning Consultation for Agricultural Developments". "B3" Correspondence dated 6th March 2024, seeking opportunity to comment on Council revised position including Irwin Carr statement regarding NIEA response and nitrogen. "B4" Cover letter dated 3rd April 2024, inc. Updated AIA dated 29th March 2024 by Irwin Carr containing nitrogen deposition figures.</p>