



<b>Title of Report:</b>	<b>Planning Committee Report – LA01/2015/0188/F</b>
<b>Committee Report Submitted To:</b>	<b>Planning Committee</b>
<b>Date of Meeting:</b>	<b>28<sup>th</sup> September 2022</b>
<b>For Decision or For Information</b>	<b>For Decision</b>

<b>Linkage to Council Strategy (2021-25)</b>	
Strategic Theme	Cohesive Leadership
Outcome	Council has agreed policies and procedures and decision making is consistent with them
Lead Officer	Principal Planning Officer

<b>Budgetary Considerations</b>	
Cost of Proposal	Nil
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

<b>Screening Requirements</b>	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:
	EQIA Required and Completed:	N/A	Date:

Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:
	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

**No:** LA01/2015/0188/F **Ward:** Altahullion

**App Type:** Full Application

**Address:** Approximately 275m NW of 145 Pollysbrae Road, Limavady

**Proposal:** Proposed broiler poultry house (containing 33,500 birds) landscaping swale and ancillary site works at lands approximately 275 metres north west of 145 Pollys Brae Road Limavady Co. Derry.

**Con Area:** N/A **Valid Date:** 15 May 2015

**Listed Building Grade:** N/A

**Agent:** 5050 Architecture 3A Keldon Court 17 Linenhall Street, Limavady

**Applicant:** Mr Malcom Maxwell

**Objections:** 15 **Petitions of Objection:** 1

**Support:** 0 **Petitions of Support:** 0

## Executive Summary

- The application proposes to erect 1 no. poultry unit for up to 33,500 birds. There is also an ancillary building proposed, as well as meal bins/silos.
- The application is a major application under Article 2(1) of The Planning (Development Management) Regulations (NI) 2015 because the proposal meets the threshold of major development under section 1 of the associated Schedule.
- The application was subject to an EIA Determination under category 17a of Schedule 1 of the EIA Regulations and a positive determination was made on 1<sup>st</sup> September 2016. The Environmental Statement was submitted on 9<sup>th</sup> December 2016 with further environmental information submitted on 8<sup>th</sup> April 2020.
- 15 objections have been received from 10 email addresses and 1 letter of petition from 3 addresses.
- All relevant consultees have been consulted and DAERA-NED and SES have recommended refusal.
- The proposed development is unacceptable in this location having regard to the area plan and other material considerations. The Planning Authority must apply the precautionary principle when considering impacts of a proposed development on national or international significant natural heritage resources. The proposed development is contrary to Paragraphs 6.174 – 6.178 of the SPPS, CTY12 of PPS21 and Policy NH1 and NH3 of PPS2 Natural Heritage, in that development would, if permitted, have the potential to have an unacceptable adverse impact on the conservation objectives of the designated sites and are contrary to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.
- The application is recommended with refusal

Drawings and additional information are available to view on the Planning Portal- <https://epicpublic.planningni.gov.uk/publicaccess/>

## RECOMMENDATION

1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 9 and the policies and guidance in section 7 and 8 and resolves to **REFUSE** planning permission subject to the reasons set out in section 10

## 2 SITE LOCATION & DESCRIPTION & CHARACTER OF AREA

- 2.1 The application site is located to the west of Pollysbrae Road, within the rural area. The site includes an existing poultry house, an associated area of hardstanding and the adjacent agricultural fields.
- 2.2 The site is accessed from an existing concrete agricultural lane which serves the existing poultry shed and hardstanding. The agricultural lane accesses off a more formal lane which serves other farm dwellings and agricultural buildings and lands.
- 2.3 The existing agricultural lane and hedging adjoin the south western boundary. Post and wire fencing and hedging defines the remaining boundaries of the site.
- 2.4 The topography of the land rises up in a westerly direction away from Pollysbrae Road. The site is on elevated ground with the land continuing to rise to the west where Altahullion windfarm is evident in the wider landscape.
- 2.5 The proposed poultry shed is proposed to NW side of an existing poultry shed. The site for the proposed poultry shed has been levelled to the same level as the existing shed. The surrounding land to the north west is approximately 1 to 2 m above the level of the site and is separated by a post and wire fence.
- 2.6 Views of the site are possible from the entrance of the access onto concrete laneway and from the public road travelling southwards, both views are viewed with the existing poultry shed in front of the site.

- 2.7 The application site is located within the rural area, outside of any settlement limit as defined in the Northern Area Plan 2016. The wider area is predominately characterised by agricultural lands, with the immediate area defined by a number of individual dwellings and agricultural buildings.

### **3 RELEVANT HISTORY**

B/2008/0427/F - New poultry house for 31,000 maximum birds - 250m north west of 145 PollysBrae Road, Dungiven – Approved – 20.08.2009

### **4 THE APPLICATION**

- 4.1 The application proposes to erect 1 no. poultry unit for up to 33,500 birds. The poultry unit measures 79.0m in length and 22.0m wide, with a ridge height of 4.8m. The unit is mechanically ventilated with fans along the ridge. There is also an ancillary building proposed, as well as meal bins/silos.
- 4.2 The application was brought before the Planning committee in May and August 2017 with an opinion to approve, on both occasions the application was withdrawn from the planning schedule to allow for the consideration of late objection items.
- 4.3 The application is a major application under Article 2(1) of The Planning (Development Management) Regulations (NI) 2015 because the proposal meets the threshold of major development under section 1 of the associated Schedule. A PAN was however not required under Section 27 of the 2011 Planning Act because the application was submitted prior to 1<sup>st</sup> July 2015. Likewise, a Design and Access Statement was not required.
- 4.4 The application was subject to an EIA Determination under category 17a of Schedule 1 of the EIA Regs. Having carried out an EIA Determination a positive determination was made on 1<sup>st</sup> September 2016. The Environmental Statement was submitted on 9<sup>th</sup> December 2016 with further environmental information submitted on 8<sup>th</sup> April 2020.

## 5 PUBLICITY & CONSULTATIONS

### External:

5.1 **Neighbours:** 15 objections have been received from 10 email addresses and 1 letter of petition from 3 addresses. Issues raised by the objections are as follows

- The Planning Authority cannot rely on Statutory Consultees responses as they have not taken into account the EU Directives. To demonstrate the point the author queries
  - (i) the amount of poultry waste generated per year,
  - (ii) where it will be disposed of and
  - (iii) whether the applicant has a Waste Management Licence and
  - (iv) whether the disposal complies with the EU Nitrates Directive regarding the disposal of sludge and over which river catchment.
- Querys if the NH<sub>3</sub> levels of ammonia were taken over a prolonged period taking into account production cycles and maximum periods of emissions during house cleaning and spreading and asked the reliability of the predicted values given.
- Querys why NIEA did not take into account toxic pollutant emissions such as Methane CH<sub>4</sub> and Nitrous Oxide N<sub>2</sub>O
- questioned why an Environmental Statement was not requested.
- Raises concern with the quality of the responses from consultees and requests the suspension of all planning applications for intensive agricultural development pending an independent investigation.
- Questions cumulative impact of all agriculture, windfarm and Anaerobic Digesters on European Protected Sites.
- Query Number of birds
- Does tonnage of waste relate to proposed number of birds or total number of birds at Pollysbrae farm.
- Hydrological link to River Roe and Tributaries SAC and Bovevagh ASSI.
- Antibiotic resistance
- One objection deals with underestimated in combination effects of poultry unit and pig farm

- HRA fails to consider any other project in the cumulative assessment for the poultry unit expansion.
- Moy Park litter utilisation strategy is not a legal agreement
- Impact of all AD plants on selection features was unknown at time of SES assessment.
- HRA fails to take account of total ammonia emissions
- NIEA have failed to take account of poultry litter processed via AD.
- NIEA have stated process contribution of Nitrogen deposition from this project on SAC is above critical level at which ecological damage occurs.
- Environmental Statement is flawed
- HRA is based on inappropriate screening policy because it is based on Moy park Litter Utilisation Strategy (MPLUS) is cited as reason not to undertake a full stage 2 assessment.
- Moy Park Utilisation Strategy provides no certainty as to destination of waste produced and therefore its adverse impact.
- MPLUS did not have a Strategic Environmental Assessment completed at time of its approval
- MPLUS impact on protected sites, species and habitats is unknown.
- MPLUS includes export of waste to another member state however there is no evidence of permits or licences or impact on protected sites in member state.
- No evidence of transboundary consultation on this project
- AD plants cited as potential processing facilities for waste did not have an EIA or HRA, nor has it been determined if waste from these plants will have adverse impact on protected species, sites or habitats.
- Screening policy of not undertaking in combination or cumulative assessment when estimated process contribution is less than 1µm/m<sup>2</sup> at designated site is flawed as it fails to take account of peak ammonia emissions during emptying of tanks and fails to include emissions from MPLUS destinations.
- Given number of intensive agricultural applications, HRA must include cumulative and in combination impacts on European Sites in NI and in other member states.
- Environmental Statement failed to consider impact of other damaging emissions such as Phosphates and Particulate

Matter including dust, fungi, bacteria and viruses. Failed to consider antibiotic resistant pathogens and antibiotic and Bioside pollution, Nitrous Oxides, Hydrogen Sulphide, Volatile Organic Compounds and Ground level Ozone.

- 98% of SAC exceed critical levels of Nitrogen Disposition at which ecological damage occurs.
- 47% rivers failed water quality standards.
- 34% rivers failed Water Framework Directive.
- Objects due to absence of HRA and cumulative impacts with other projects.
- Objection questions that 70metre visibility splays exist and that access is inadequate for lorries
- Noise from traffic movements at night
- Odour
- Moy Park propose waste to go to Tully AD Plant but as location for spreading of digestate is unknown, adverse impact is unknown
- HRA for Tully AD plant failed to consider Total Nitrogen and Total Phosphates
- Proposal would increase Total Nitrogen and Total Phosphates.
- Unknown and unacceptable impacts on designated sites
- Inconsistent with NAP policy to protect designated sites
- Unacceptable impact on health risks

**Internal:**

5.2 **Transport NI:** No objection subject to conditions.

**Environmental Health:** refer to NIEA as permit required.

**Shared Environmental Service:** advises that it cannot be certain, beyond reasonable scientific doubt, that the proposal will not have lasting adverse effects on the integrity of one or more European sites.

**NIEA - NED:** Contrary to Planning Policy Statement 2: Natural Heritage, Policy NH 1 and NH3, in that development would, if permitted, have the potential to have an unacceptable adverse impact on the conservation objectives of the designated sites.

**NIEA - Industrial Pollution and Radiochemical Inspectorate (IPRI)** has considered this application and is content, subject to the recommended informative.



**NIEA – Water Management Unit:** content subject to Conditions and applicant referring and adhering to standing advice and any relevant statutory permissions being obtained.

**DARDNI:** Have confirmed farm business ID and that applicant claims single farm payments.

**NI Water:** No objection.

**Rivers Agency:** No objection.

**Loughs Agency:** No objection.

## **6 MATERIAL CONSIDERATIONS**

- 6.1 Section 45(1) of the Planning Act (Northern Ireland) 2011 requires that all applications must have regard to the local plan, so far as material to the application, and all other material considerations. Section 6(4) states that in making any determination where regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 6.2 The development plan is:
- Northern Area Plan 2016 (NAP)
- 6.3 The Regional Development Strategy (RDS) is a material consideration.
- 6.4 The Strategic Planning Policy Statement for Northern Ireland (SPPS) is a material consideration. As set out in the SPPS, until such times as a new local plan strategy is adopted, councils will apply specified retained operational policies.
- 6.5 Due weight should be given to the relevant policies in the development plan.
- 6.6 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

## **7 RELEVANT POLICIES & GUIDANCE**

Northern Area Plan 2016

## Strategic Planning Policy Statement

### PPS2 Natural Heritage

### PPS 3 Access, Movement and Parking

### PPS21 Sustainable Development in the Countryside

## **8 CONSIDERATIONS & ASSESSMENT**

- 8.1 The main considerations in the determination of this application relate to: the submission of an Environmental Statement; the principle of the development; visual integration and impact on character; impact on natural or built heritage; access arrangements; impact on neighbouring residential properties and representations.

### **Environmental Statement**

- 8.2 The Planning Authority is obliged under Regulation 10 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 to determine whether the planning application should be accompanied with an Environmental Statement. The proposed development falls within category 17A of Schedule 1 of the 2015 Regulations therefore officials concluded that the application needed to be accompanied by an Environmental Statement.
- 8.3 An Environmental Statement was submitted in December 2016 which included chapters/sections to aid the assessment of noise, air quality, odours, ecology, water environment, transport, socio-economic impact, litter control and nitrates management. The Environmental Statement was advertised, neighbours were notified and consultees were re-consulted on the content of the Environmental Statement. Officials contacted the agent on 29<sup>th</sup> November 2019 to seek Further Environmental Information regarding the transboundary nature of the means of litter disposal. The agent sought an extension of time on the 28<sup>th</sup> February 2020. Further Environmental Information was submitted by the agent on 19<sup>th</sup> March 2020 with further clarification submitted in April 2020.

- 8.4 The Environmental Statement and FEI informed the assessment of the application.

**Principle of development**

- 8.5 The application site is located in the rural area as defined by the Northern Area Plan 2016. Given the nature of development, the proposal has the potential to impact on areas of international and national importance. NAP states that “development proposals within or adjoining these areas will be assessed in accordance with prevailing regional policy as set out in PPS2: Natural Heritage.
- 8.6 The SPPS states that sustainable development shall 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.
- 8.7 Paragraph 6.73 provides a context for agriculture and forestry development: provision should be made for development on an active and established (for a minimum 6 years) agricultural holding or forestry enterprise where the proposal is necessary for the efficient operation of the holding or enterprise. New buildings must be sited beside existing farm or forestry buildings on the holding or enterprise.
- 8.8 Policy CTY 1 of PPS 21 sets out the 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. One of the types of development is agricultural and forestry development in accordance with Policy CTY 12.
- 8.9 Policy CTY 12 states that planning permission will be granted for development on an active and established agricultural and forestry holding providing a list of criteria are met. DAERA have confirmed that the farm business ID number has been active and established for the required period and that the business claims a single farm payment. The site is located on the farm maps submitted with the application, the proposed development is sited on an active and established farm holding. CTY12 requires that demonstration that :

**a) It is necessary for the efficient use of the agricultural holding.**

- 8.10 DARD has confirmed that the farm business ID number has been active and established for the required period and that the business claims a single farm payment. The applicant currently operates a poultry farm. The proposed building is to accommodate an expansion of the business. Paragraph 4.14 to 4.20 of the Environmental Statement advises that there are no suitable existing buildings on the applicant's landholding. Moy Park are unable to utilise existing agricultural buildings to house broiler chickens as general purpose agricultural buildings or livestock sheds are not built to the specifications insisted upon for efficient, climate controlled and cost effective poultry production. Paragraph 4.18 indicates that the building is considered necessary to facilitate additional bird capacity on site as part of the wider Moy Park expansion programme. The building is considered necessary for the efficient use of the agricultural holding.

**b) It is appropriate to the location in terms of character and scale.**

- 8.11 The proposed shed is located adjacent to an existing poultry house and 200m north west of the main farm grouping. The poultry unit is 4.8m in height to the ridge, 22.0m wide and 79.0m in length. An ancillary building is proposed to the edge of the apron and the two feed bins are set adjacent to the existing poultry house.
- 8.12 The proposed building is of similar proportions and design to the existing shed and is read within the context of the existing buildings and other agricultural buildings which punctuate the landscape. As such, the proposal satisfies the policy in this regard.

**c) It visually integrates into the local landscape and additional landscaping is provided as necessary.**

- 8.13 The site is elevated relative to Pollysbrae Road with the land continuing to rise to the west. The site is not immediately visible from the public road with public views limited to sections of Pollysbrae Road to the north east. Views from this aspect are afforded a backdrop by the rising topography. The existing poultry house is absorbed into the landscape, with the dark green cladding blending in with the fields, hedgerows and

agricultural buildings which characterise the area. The wider landscape is dominated by the Altahullion windfarm. The proposed poultry shed is sited to the north western side of the existing shed which will partly screen views of the proposed shed from the South East.

8.14 The ancillary building is small in scale and is considered acceptable and integrates with the existing grouping.

**d) It will not have an adverse impact on the natural or built heritage.**

8.15 When considered in the context of the existing poultry houses, the current proposal raises the number of birds that the installation can facilitate above the threshold defined in Section 17 of Schedule 1 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015. As such the application was accompanied by an Environmental Statement.

8.16 Shared Environmental Services has undertaken a Habitats Regulations Assessment. The assessment concluded that having considered the nature, scale, duration and location of the project and in light of Statutory Nature Conservation Body (SNCB) advice, it is concluded that the proposal as currently planned could have an adverse effect on the integrity of the River Roe and Tributaries SAC/ASSI and planning permission cannot be granted until such times as the applicant can demonstrate no adverse effect on the integrity of the site.

8.17 Having considered the Environmental Statement and reviewing their operational policy, NED has advised that they have serious nature conservation concerns with this proposal and advises that it may be contrary to PPS2 Natural Heritage, Policy NH1 and NH3, in that development would, if permitted, have the potential to have an unacceptable adverse impact on the conservation objectives of the designated sites.

8.18 There is no built heritage in the vicinity of the site which this development will impact on.

8.19 The proposal is contrary to criteria (d) of CTY12, see paragraph 8.25 for further information.

**e) It will not result in a detrimental impact on the amenity of residential dwellings outside the holding.**

8.20 NIEA - Industrial Pollution and Radiochemical Inspectorate (IPRI) is the competent authority for the investigation of any noise or odour complaint for an application of this type and size. Following consideration of an Air Quality Impact Assessment IPRI has stated that the demonstrated impacts of emissions of odour, dust and ammonia on sensitive receptors (i.e third party dwellings) are likely to be acceptable.

### **New buildings**

8.21 In the case where new buildings are proposed, CTY 12 requires sufficient information to confirm: that there are no suitable existing buildings that can be used; the design and materials are sympathetic to the locality; and the proposal is sited beside existing farm or forestry buildings. Having regard to the specific nature of the development, the Environmental Statement comments that there are no suitable existing buildings on the holding. The design and materials of the building are sympathetic to the locality and the building is located to cluster with an existing farm building.

8.22 Having considered the proposal under CTY12, the proposal fails to meet criteria (d) of Policy CTY 12.

### **Visual Integration and Impact on Character**

8.23 Policy CTY 13 allows for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design.

As mentioned above under paragraph 8.13 and 8.14, the proposal will visually integrate into the surrounding landscape, has a suitable backdrop, is not prominent and is of an appropriate design.

8.24 Policy CTY 14 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. Given the new poultry shed will sit to the rear of the existing poultry shed with rising land to the rear, the proposed

shed would not be prominent and would not cause a detrimental change to the rural character of this area.

### **Impact on Natural Heritage**

- 8.25 Policy NH1 and NH3 of PPS 2 deal with National, European and Ramsar sites. As outlined above at paragraphs 8.15 to 8.17 SES have advised that the proposal as currently planned is likely to have a significant effect on one or more European sites and therefore was subject to an appropriate assessment. The appropriate assessment concluded that the Old sessile oak woods and associated habitat as a selection feature of the river Roe and Tributaries SAC are particularly vulnerable to ammonia and nitrogen deposition. The recommended ammonia critical levels (CLE) and nitrogen critical levels (CLO) are already exceeded at this feature. Reasonable doubt remains as to the absence of an adverse effect on the site integrity from further exceedance of the ammonia (CLE) and nitrogen (CLO). NIEA stated that the woodland component of the SAC should be attributed a lower CLE due to the particular sensitivity of associated habitats to the toxic effects of atmospheric ammonia. SES considered the advice from NIEA in light of the conservation objectives and advised the Council that it cannot ascertain the absence of adverse effects.
- 8.26 The Planning Department in its role as the competent Authority under the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended), and in accordance with its duty under Regulation 43, has adopted the HRA report, and conclusions therein, prepared by SES. This has found that it cannot be certain, beyond reasonable scientific doubt, that this proposal will not have lasting adverse effects on the integrity of one or more European sites. The project would not therefore comply with Regulation 43 of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 as amended or meet the policies of NH1 of PPS2. No evidence has been provided to demonstrate that any exceptional circumstances detailed in NH1 apply.
- 8.27 NIEA has concluded that they have serious nature conservation concerns with this proposal and advises that it may be contrary to PPS2 Natural Heritage, Policy NH1 and NH3, in that the

development would, if permitted, have the potential to have an unacceptable adverse impact on the conservation objectives of the designated site.

### **Access arrangements**

- 8.28 Policy AMP3 of PPS3 deals with access to public roads. DFI Roads has been consulted and offered no objection subject to conditions. One of the letters of representation raised issue with the ability to achieve 70m visibility splays and the acceptability of the access. DFI Roads was re-consulted for comment as the competent authority on such matters. DFI Roads responded to advise that both splays were satisfactory and that the access was to be unaltered. DFI Roads did not raise objection to the proposal.

### **Impact on neighbouring residential properties**

- 8.29 One of the letters of representation raised traffic noise at night and odour. Environmental Health were asked to comment and responded to advise that they had not received any complaints regarding noise from traffic entering or leaving the site nor have any odour complaints been lodged. EHO advise that the ES indicates that the majority of deliveries and collections to and from the site occur between 7am and 10pm with occasional night time traffic movements (4 – 5 vehicle movements) throughout the crop cycle (approximately 7 weeks). It is envisaged within the traffic assessment that current vehicle movements associated with the existing poultry houses will increase from 35 vehicles per crop cycle to 59 if this additional house is constructed; on an annual basis this equates to 1.1 vehicle movements per day. Within the noise assessment it is stated that drivers adhere to strict speed limits and engines are stopped when the vehicle is not in use.
- 8.30 With regard to odour impacts, an air quality assessment has been carried out by the applicant to determine the potential impact this proposed poultry house will have on nearby receptors in terms of human receptors for odour and ammonia. The existing poultry houses and the proposed house will be subject to regulation by IPRI who require the operator to comply with an IPPC permit by way of conditions relating to odour and ammonia emissions from the site. The applicant's air quality impact assessment would suggest that the highest modelled levels of odour and ammonia are likely to arise at 159 Pollys



Brae Road, 170m from the site, but that these concentrations will not exceed air quality limits.

## **Representations**

- 8.31 As documented at paragraph 5.1, 15 letters of representation have been received from 10 email addresses and 1 letter of petition from 3 addresses. All representations raise objection to the proposal.
- 8.32 One representation objects on the grounds that no Environmental Statement has been submitted. As outlined at paragraphs 8.2 and 8.3 an Environmental Statement was submitted in December 2016 with further environmental information submitted in March and April 2020.
- 8.33 Objections relating to visibility splays, noise from traffic movements and odour is dealt with at paragraphs 8.27 and 8.28.
- 8.34 The issue of transboundary consultation under the EIA Regs and no evidence provided of permits or licences or impact on protected sites of a member state was raised in the representations. The Planning Department contacted the agent on 29<sup>th</sup> November 2019 to seek Further Environmental Information regarding the transboundary nature of the means of litter disposal. Further Environmental Information was submitted by the agent on 19<sup>th</sup> March 2020 with further clarification submitted in April 2020. The FEI superseded pages 6 and 70 of the ES and clarified that all waste would be utilised through the Tully Biogas Plant as per the Moypark Litter Utilisation Strategy. No waste would be disposed of to a member state.
- 8.35 Regarding the specific comments about reliance on Statutory consultees and the subsequent questions about poultry waste (amount generated per year, disposal and whether the applicant has a Waste Management Licence and whether the disposal complies with the EU Nitrates Directive regarding the disposal of sludge and over which river catchment), NIEA highlighted that the Litter Utilisation Information was previously submitted in which it stated that the total litter produced annually is 881.4

tonnes for the site with the proposed birds producing 257.47 tonnes. It will be disposed of under Moy Park's updated Litter Utilisation Strategy as agreed with the NIEA. All litter is to be transferred to Tully AD Plant as provided for by the Litter Utilisation Strategy. This can be regulated by condition. An assessment under the Habitats Regulations would have been carried out for Tully AD plant by the competent authority.

- 8.36 Regarding ammonia levels NIEA refers to the Air Quality Impact Assessment previously submitted which advised that the critical level of NO<sub>x</sub> is not exceeded in the vicinity of the farm therefore there will be no significant direct effects resulting from gaseous emissions of nitrogen oxides. With regards emissions such as Methane CH<sub>4</sub>, NIEA have advised that there is no direct chemical effect on animals or plants, any effects of CH<sub>4</sub> are secondary arising from climate change.
- 8.37 Concern was raised with the quality of the responses from consultees and requested the suspension of all planning applications for intensive agricultural development pending an independent investigation. The Planning Department has consulted all relevant statutory consultees throughout the processing of this application and has taken into account the responses from the competent authorities.
- 8.38 Representations queried the number of birds to be housed in the proposed development. The description of the proposal indicates that the proposed broiler house will contain 33,500 birds. The Environmental Statement submitted during the processing of the application also indicates the same number of birds to be housed within the proposed development. The ES advises that the site currently comprises one existing broiler house with a capacity of 33,500 birds and that there are also two existing broiler houses on the farm but outside the application site boundary which have a maximum capacity of 20,500 and 25,500 birds.
- 8.39 The hydrological link to the River Roe and Tributaries SAC and Bovevagh ASSI is known and SES were appropriately consulted and were given opportunity to comment on the application and the Environmental Statement.

- 8.40 The issue of antibiotic resistance is not a matter to be regulated under planning.
- 8.41 Representations raised concern that the Moy Park Litter Utilisation Strategy is not a legal agreement. Reliance on the litter utilisation strategy is a matter that could be dealt with via a condition.
- 8.42 Whether or not the assessment of all AD plants took account of the selection features is not a matter for the assessment of this proposal.
- 8.43 Representations queried whether NIEA have failed to take account of poultry litter processed via an AD unit. Any poultry litter processed via an AD unit is considered under a separate consenting regime.
- 8.44 A representation points out that NIEA have stated process contribution of Nitrogen deposition from this project on the SAC is above critical level at which ecological damage occurs. This is acknowledged and refusal is recommended.
- 8.45 A representation states that the Environmental Statement is flawed and that HRA has not been done. The ES has been reviewed by the competent authorities and a recommendation has been reached. A Stage 2 Appropriate Assessment was carried out by SES.
- 8.46 Various issues were raised by objectors regarding the MPLUS. It has been confirmed that the litter/waste will be taken to Tully AD Plant. Tully AD plant will have been subject to the relevant permits and processes to obtain permission. Consideration of the MPLUS and whether it has had a SEA is not therefore a relevant consideration to this proposal.
- 8.47 An objection raised concern that Moy Park propose waste to go to Tully AD Plant but as the location for spreading of digestate is unknown, the adverse impact is unknown. As Tully AD Plant benefits from permission, the operation of and HRA for Tully is a matter of the regulation of Tully through the appropriate authorities.

8.48 Tully AD plant was subject to HRA in 2015 by NIEA Regulation Unit. The HRA for Tully AD plant is not a matter for the Council as Regulation 47 of the Conservation (Natural Habitats etc) Regulations (NI) 1995 (as amended) provides that a competent authority is not required to assess the implications of a project which could be more appropriately assessed by another competent authority.

8.49 Third parties raised concern with the unacceptable impact on health risks. EHO are the competent authority on such matters and have not raised issue with such matters.

## **9 CONCLUSION**

9.1 The proposed development is unacceptable in this location having regard to the area plan and other material considerations. The Planning Authority must apply the precautionary principle when considering impacts of a proposed development on national or international significant natural heritage resources. The proposed development is contrary to Paragraphs 6.174 – 6.178 of the SPPS, CTY12 of PPS21 and Policy NH1 and NH3 of PPS2 Natural Heritage, in that development would, if permitted, have the potential to have a significant effect on the River Roe and Tributaries SAC, a European site and an unacceptable adverse effect on the integrity or special interest of the River Roe and Tributaries ASSI and is contrary to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995. Refusal is recommended.

## **10 Refusal Reasons**

10.1 The proposal is contrary to Paragraphs 6.174 to 6.178 of the Strategic Planning Policy Statement, Policy CTY12 of PPS21 and Policy NH1 of Planning Policy Statement 2 Natural Heritage in that the development would, if permitted, have the potential to have a significant effect on the River Roe and Tributaries SAC, a European site.

10.2 The proposal is contrary to Paragraphs 6.174 to 6.178 of the Strategic Planning Policy Statement, Policy CTY12 of PPS21 and Policy NH3 of Planning Policy Statement 2 Natural Heritage in that the development would, if permitted, is likely to have an unacceptable adverse effect on the integrity or special interest of the River Roe and Tributaries ASSI.

Location Map

