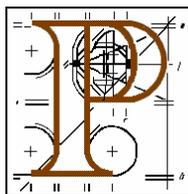


An Bord Pleanála



Inspector's Report

Reference: PL04.240127

P.A. Reference: 11/6233

Title: Change of use from agricultural sheds to storage sheds for machinery, fertilisers, farmyard manure and soil conditioners.

Location: Farranalough, Newcetown, County Cork

Applicant: Fiona Shorten

Appellant: John Coughlan
Mary O'Donovan
Eugene & Julie Desmond
Michael and Mary Scanlon
Michael & Mary Desmond

Observers: Inland Fisheries Ireland
Farranalough & District Residents Association

Planning Authority: Cork County Council

Type of Appeal: Third party against decision to grant permission

Decision: Permission granted with conditions

Date of Site Visit: 18th April 2012

Inspector: Philip Davis

1. Introduction

This appeal is by a number of local residents, with observations by a residents association and the Inland Fisheries Ireland, against the decision of the planning authority to grant permission for a change of use of agricultural sheds to storage of biosolids, manure and conditioners. This site was subject to a referral to the Board on the issue of whether the use of a site for the storage of sludge involves a material change of use – the application has arisen from the Board's decision that such a use is material and is not exempted development.

2. Site Description

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

Farranlough, Newcestown

The appeal site is located in rolling hilly countryside to the north-west of Bandon, Co. Cork, between the villages of Newcestown and Crookstown. It is in an area served by a minor road network some 6 km south of the N22 Cork to Killarney Road. The area is characterised by gently rolling lush countryside with large fields in pasture and tillage divided by ditches and hedgerows. The area is relatively sparsely populated with substantial farmsteads and occasional dwellings along the road network. The village of Newcestown is the main settlement in the area.

The appeal site is located within a larger farmholding approximately 1.5 km north-east of Newcestown on a narrow third class road which links two larger country roads. The farmholding slopes gently to the north-west into the wide shallow valley of the River Bride, which is a major tributary of the Lee, meeting it just north-west of Cork City.

The site and environs

The appeal site, with an area given as 0.41 hectares, is a farmyard attached to an abandoned dwelling (not part of the site). It is paved with concrete slabs and hardcore and occupied by a series of galvanised metal farm storage buildings and sheds. The buildings are largely disused apart from some storage of hay and some rusting machinery. The site also includes an access road running west to connect with the local road. The site is part of a much larger landholding which includes a vacant farmhouse immediately to the south-west of the appeal site. The landholding is primarily open farmland, extending out to the Musgrove Crossroads about 500 metres to the west and down to the River Bride to the north-east. The nearest dwellings are just over 250 metres to the south, at the junction of the nearby road with the road to Newcestown, at the Ballynamuck Crossroads.

3. Proposal

The proposed development is described on the site notice as:

Change of use of the existing agricultural sheds to agricultural store to include the storage of agricultural machinery, organic and inorganic fertiliser such as granular artificial fertiliser, biosolids, farmyard manures and soil conditioners.

4. Planning Context

Planning permissions – appeal site

There is no recent planning history on file, but in September 2011 the Board decided a Referral case on the site (**PL04.RL.2889**). In this case, the question to the Board was ‘*whether or not the storage of sludge involves a material change of use on an agricultural building and is or is not development or is or is not exempted development*’. The Board decided that as the sludge is a waste by-product and the mixing of sewage sludge with lime in the building comprises the processing of waste material, the use of an agricultural shed to store organic biosolids and the mixing of this material with lime is development and is not exempted development.

Planning permissions – general area

None on file. An appellant makes reference to appeal PL87.232603 in relation to an argument that the allegedly inaccurate site description should be a ground for refusal.

Development Plan and national policy

The appeal site is in a generally unzoned agricultural area and there are no designated landscape or wildlife areas in the vicinity. The closest designated habitats are in the lower River Bride area – proposed NHA 00094 (Lee Valley).

The Department of Environment, Community and Local Government issued a Code of Good Practice for the use of Biosolids in Agriculture in 2008.

5. Technical Reports and other planning file correspondence

Planning application

The planning application, with plans and specifications and a supporting letter was submitted on the 19th October 2011. In response to a further information request a letter with a response and attached report was submitted on the 8th December 2011.

External reports and correspondence.

Several local residents and organisations objected to the planning application.

Internal correspondence and reports

Environment Report: First report outlines a number of concerns and requested further information from the applicant. The second report following this notes that it is intended that the applicant will submit an application for a certificate of registration under SI 32 of 2010 and a draft Nutrient Management Plan has been submitted. No objection subject to recommended conditions.

Engineering report (16th December 2011). No comments, grant recommended.

Area Engineer (13th December 2011): Roads considered satisfactory, no objection.

The first planners report outlined a number of issues with the proposal, mostly related to clarification of the nature of the proposed development. Following the submission of further information, permission with conditions was recommended.

6. Decision

The planning authority decided to grant permission subject to 11 no. conditions. All conditions refer to limitations on the use of the site to the proposed change of use only, and to environmental controls on the operations.

7. Grounds of Appeal

John Coughlan, Knockadooma

- Objects to the additional traffic on the road and the potential traffic hazard.
- Expresses concerns about potential pollution of air and water from leakage of material on the site.

Mary O'Donovan, Farranalough

- Objects for reasons relating to noise pollution (in particular extra HGV's past her home), odours and water pollution of her water supply.

Eugene & Julie Desmond, Farranalough

- Expresses concerns about the health and safety aspects of storing material in old sheds and questions whether the landholding is large enough to use the quantum of materials described in the applications.
- Objects on the basis of residential amenity and impacts on property values in the area.

Michael & Mary Scanlon, Mossgrove

- It is argued that the development description is misleading and does not reflect the details outlined in the Referral dealt with by the Board – in particular it is argued that a waste process (i.e. mixing lime with biosolids) will take place.
- It is argued that the access roads, and the facilities (including building and hardstanding) are not up to standard for the scale of proposed works.
- It is argued that the works are ongoing, and that as such the applicant should have applied for retention of the works – noted that the Inspectors Report stated that the site was in active use for storage/processing of biosolids.
- It is argued that the proposed development should have been refused due to the inadequate description (reference to appeal reference PL87.232603).
- It is argued that it would have an unacceptable impact on the residential amenities of the area and local property values by way of nuisance and odours and impacts on the local environment – it is submitted that an EIA should have been required.
- It is argued that it is contrary to the County Development Plan as the area is identified as open countryside and there is no zoning designation for such a use.

Michael & Mary Desmond of Farnalough

- Objects on the grounds of potential pollution of local watercourses.
- States that there have been odour problems from the site in the past and expresses concerns that the same odour issues claimed at a site in Templemartin would affect this site.
- It is argued that the road access is inadequate for heavy vehicles.
- Concerns are expressed at the possibility of extra vermin in the area and of possible health risks.

8. Observers

Inland Fisheries Ireland

The basic principle of conditions 3 and 10 (both conditions relating to the control of the fertilisers within the site) are supported, but concerns are expressed at the planning authorities approach in this matter – it is considered that details relating to the storage and handling of such materials should be addressed as part of the application process, not as something to be dealt with after permission is granted. Concerns are expressed at the absence of an inspection and validation process for any revised plans for the site, and the absence of any requirements for monitoring of soil nutrient data on the lands.

Farranlough & District Residents Association (petition attached)

No objection with the principle of recycling biosolids on agricultural land, but expresses concern about issues relating to the application, i.e.

- It is submitted that additional information is required on the biosolids in order to conform to the EU Directive on the disposal of sewage sludge on agricultural land (86/278/EEC).
- It is claimed that there are a number of discrepancies in relation to the figures provided for applying bio-solids on the land in the absence of information on the nature of the materials and the crops grown and it is questioned if it is in accordance with DoECLG good practice guidance.
- Concerns are expressed at the long term impact on soil and water.
- It is noted that the conditions require works such as holding tanks and soakaways which were not specified in the planning application.
- It is noted that calculations on the capacity of the farm are based on a 45 hectare holding, but it is noted that this does not appear to take account of a significant area of land which is within the buffer zone for a water supply at Mossgrove (plans and further information attached).
- A copy of correspondence is attached with regard to concerns set out by a Senior Executive Scientist at Cork County Council about impacts on the Mossgrove Water Supply.
- It is noted that there are a significant number of dwellings surrounding the area and concerns are expressed at amenity and public health issues.
- It is noted that a number of tributaries for the River Bride run through the land.
- It is claimed that the soil may have poor soakage and concerns are expressed at the lack of testing in the application documents.
- It is claimed that there have been issues with a similar facility in Templemartin.
- It is submitted that the road access is inadequate for heavy vehicles.

9. Applicants response

- It is submitted that the quantum of material brought to the farm and used on the lands will only be the volume permitted under the annual Nutrient Management Plan (NMP), which will be set out in accordance with the Departments 'Code of Practice for the Use of Biosolids in Agriculture'. The 2012 NMP indicates a requirement for 450 tonnes of biosolid fertiliser on the applicant's farm.
- Delivery will be on tractor drawn agricultural trailers, and will amount of 25 deliveries of 18 tonnes each (if 450 tonnes is required). It is claimed that this is less than may be required for normal cattle or dairy operations.

- It is stated that the NMP will be in accordance with all relevant codes and ISO compliance standards, and Cork County Council will sign off on all activity on the site.
- It is stated that only treated biosolids will be delivered to the site – it is stated that odour problems are only foreseen with untreated materials such as sewage sludge and it is not proposed to bring this material to the farm. It is also submitted that this material does not attract rodents or vermin.
- It is stated that a Certificate of Registration is required for all the storage buildings on the site, this should address concerns about the quality of structures for storage on the site.
- It is argued that the site description is accurate as it is not proposed to process any material on the site.

10. Planning Authority's Comments

The planning authority responded with the following comment:

Conditional permission was recommended having regard to the nature of the proposal, the policy context, the locational characteristics, the potential impacts, traffic/road safety issues, potential environmental impacts, the reduced scale of the proposal and the recommendations of the Area Engineer and the Environmental Officer. The use and extent was limited by condition. On the date of inspection, it was not evident that the proposed use had commenced.

11. Further correspondence

Michael and Mary Scanlon wrote to support the observation of Inland Fisheries Ireland and the Farranalough & District Residents Association. The planning authority stated that they considered that the planners report had dealt with the issues raised by Inland Fisheries Ireland.

12. Assessment

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

- Principle of development
- Appropriate Assessment
- Pollution
- Residential amenity
- Traffic
- Other issues
- Concluding remarks

Principle of development

The proposed development is in open countryside with no specific zoning designation. There are general policies within the County Development Plan towards facilitating agricultural uses and the protection of environmental/amenity qualities, although these do not relate specifically to a proposal such as this. The planning application – which is solely for a change of use, not for any new structures or plant – has arisen from a Board decision that the use of biosolids in this context is not exempted development and represents a material change of use. I note that the nature of the biosolids has changed from the proposal originally submitted to the Board as a reference case – it is no longer proposed to use sewerage sludge, the material is waste from food processing and will be pre-processed before arriving on site. However, it is not argued by any of the parties that the proposal does not represent a material change of use or is exempted development.

One of the appellants has argued that the proposed use has already commenced, and that the application should therefore have been for retention. I am satisfied from my site visit and the information on file that there has been very little activity on the site for some time and that there is no authorised development ongoing.

The statutory context for the handling and final use of material of this type is set under SI 32 of 2010: Waste Management (Registration of Sewage Sludge facilities) Regulations. Guidelines for the implementation of these regulations are set out in the DoECLG document ‘Codes of Good Practice for the use of Biosolids in Agriculture: Guidelines for farmers’ which predates these regulations. There is no direct reference in either of these documents to requirements under the Planning Acts. I am not aware of any precedents for this type of change of use since the Board quite recently decided it was a material change of use and not exempted development. I note that the applicant has specifically stated in correspondence that all biosolids will have been pretreated before being brought to the site.

Fisheries Ireland have questioned whether it is appropriate to grant permission for a change of use, when the proposal will likely require some works to ensure the site is appropriate for the storage of what may constitute a waste material (it is acknowledged that some improvements will have to be made to the hardstanding and drainage in order to comply with the Registration requirements of SI 32 of 2010). I would note that if the material was considered ‘normal’ fertiliser, all these works would be most likely exempted development. I note in this regard that the existing buildings have clearly been unused for some time and are not in a particularly good state of repair, although the main sheds for storage (sheds 1 and 2 on the submitted plans) identified in the applicants letter to the Council dated 6th December 2011 are stated by the Environment Department of the Council to be in sufficient structural condition for use without significant upgrading.

The planning authority has implicitly decided that the core planning issue is the principle of storing the material on the site and that details of any general upgrades directly related to the activities are left to be agreed under the SI 32

2010 and the Nutrient Management Plan and I would note in this regard the provisions of Section 34(13) of the 2000 Act. While I have some concerns with the principle of granting permission solely for a change of use when some works are likely, in this regard I am satisfied that the requirement to agree a Nutrient Management Plan with the Council, in addition to conditions limiting the use of the site, would be appropriate on this site, given the generally reasonable structural condition of sheds 1 and 2.

I conclude therefore that as the purpose of the change of use is to facilitate agricultural activities, it is consistent with Development Plan policy subject to the usual amenity and environmental considerations. Given the specific locational context, I consider it reasonable to accept the planning appeal as a 'change of use' without the requirement to submit details of any alterations to the hardstanding or drainage arrangements, although I would comment that this may not always be acceptable – and it does not preclude the possibility of further permissions being required on the site in the event of the licensing authority requiring more substantive physical works than suggested under other statutory codes.

The appellants have raised a number of detailed objections with regard to the capacity of the landholding to utilise without creating pollution the quantum of biosolids proposed. Given the detailed nature and extent of the Nutrient Management Plan required under SI 32 of 2010, I consider that this is primarily an issue for the registration/licensing authority. The appeal is for the use of the buildings for storage and as such I would conclude that the issue of the amount of material to be stored would only become a planning issue if it was clearly in excess of any reasonable quantity that could be used in the farmholding. I am satisfied that the quantities submitted appear reasonable in the context of the overall landholding, and that the permitting the change of use does not preclude the spreading of this material being reduced under the registration requirements under SI 32 of 2010 and other codes.

Appropriate assessment

There are no Natura 2000 sites in the vicinity of the appeal site, and none within the direct catchment of the Bride River. There are proposed NHA's further downriver. The only Natura 2000 sites that could potentially be impacted upon are in Cork Harbour, where the River Bride drains (via the Lee). While the biosolids have a very high pollution potential in freshwater if they are released inappropriately, the site is subject to the registration requirements and code of practice regarding the spreading of such materials which should ensure adequate controls. Due to the long distance and attenuation of the waters between the site and these designated sites, I consider that there is no reasonable possibility of there being any impact on the conservation objectives of a Natura 2000 site.

Pollution

As noted above, the biosolids have a very high pollution potential. Release of pollutants could either occur during transport and storage, or through inappropriate usage on the land. I note the concerns of Inland Fisheries

Ireland with regard to the level of detail on pollution control measures on the site, and I concur that the buildings and paving are of a poor standard and will require some upgrading to ensure that any accidental spillages can be captured before entering local watercourses. There are no watercourses within the immediate area of the farm buildings – the closest being approximately 500 meters distant, down a shallow gradient. This seems more than sufficient to ensure that appropriate measures in line with existing codes of practices should provide adequate protection in the event of accidental spillages.

I note the strong concerns expressed by locals about the capacity of the farm to absorb the biosolids as a fertilizer, with particular regard to both local watercourses and to nearby wells. There is an obvious potential for pollution of water resources through inappropriate applications of the processed biosolids. Notwithstanding this, the same concerns apply to normal fertilisers, farm wastes such as cattle slurry and ordinary agricultural activities, and the control of this is set out in the registration requirements under SI 32 2010 and related regulation. The main planning question put to the Board is whether the farm buildings are appropriate for the storage of such material and while the availability of land for its reuse is certainly relevant, the precise details and control are not a matter for a planning condition. As there is a substantial area of agricultural land available to the applicant I consider that in line with national policy this site is suitable subject to controls set out in other legislation and guidelines.

Residential amenity

The farm buildings are in a largely rural area – the nearest settlement is some 1.5 km away. The adjoining road is largely free of dwellings for much of its length. The nearest dwelling is at the Ballynamuck Crossroads, approximately 250 metres distant (not 521 metres as indicated on one of the site location maps, this appears to have been a scaling error). There would be a significant number of one-off, non-agriculture related dwellings within about 500 metres of the appeal site and many more would be close to the landholding.

I do not consider that the application of the material to the soils is a planning matter in this appeal as it relates to its storage within the sheds. As such, I would consider the main issue to be odour, nuisance and traffic, the latter of which I will deal with in more detail below.

There is obvious potential for untreated materials (as were originally proposed in the reference case) stored in unsealed containers to create a major odour problem in the vicinity and to attract vermin, although to what extent this would be worse than many modern agricultural practices would be difficult to quantify. I would certainly be concerned about any permission granted for the storage of untreated sewage sludge or related sludges on this site without the provision of fully sealed storage vessels. Notwithstanding this, the application with related documentation and response to the appeal states unambiguously that only the importation of treated materials is being proposed – this can be confirmed by condition (I would consider that the storage of untreated waste material on the site would require an additional permission). I would also recommend a condition such that no such use of the site can commence until

the Certificate of Registration required under SI 32 of 2010 from Cork County Council has been granted. I am satisfied that with these conditions any impacts on adjoining dwellings would be no greater than would be expected from any modern agricultural facility.

Traffic

The application states that only biosolids to be used on the landholding will be brought to the site – I would consider that the use of the buildings to store any defined waste for use on other farm holdings would require an additional permission. The quantities would therefore be limited by the size and nature of the farm, and amounts to approximately 450 tonnes, which equates, according to the applicant, to some 25 deliveries of 18 tonnes each. I concur with the planning authority in their conclusion that this would be in accordance with what would be expected for ‘normal’ farm activities over the course of a year on a farm such as this. The engineering assessments on file indicate that the road, while narrow, is suitable for such a load, and the sight lines at the entrance to the site and nearest road junction to the south are up to an acceptable standard. While I would consider the existing entrance to be a little tight, given the small number of deliveries and the established use of the land, I consider it to be acceptable.

Other issues

As the proposed development involves relatively minor works to the farmyard I do not consider that there are any other major planning issues involved – there are no impacts on visual amenities or archaeological implications. The proposed change of use does not come within the Development Contribution Scheme adapted by the County Council and I do not consider that other financial contributions would be required.

Concluding remarks

The planning issues regarding this appeal are somewhat complicated by the lack of clarity around the issue of regulatory control for the proposed biosolids – so far as I am aware this is the first appeal since the Board decided that the storage of materials of this nature required planning permission. While the concerns expressed by the appellants are genuine and I would share the concerns about the potential for pollution and nuisance, I consider that most of these issues are best addressed through the powers the local authority have under the requirements for a Certificate of Registration, and I would note that having regard to Section 34(13) of the Act this permission does not in any way over-ride the applicants responsibilities under other Acts and regulations. The storage of the materials as described in the site notices and related documentation is quite limited in extent, and is drive by national policy with regard to the re-use of waste materials in an appropriate manner. I therefore consider it acceptable in principle, subject to conditions ensuring that only pre-treated wastes can be accepted, that only biosolids for use on the landholding permitted under the Nutrient Management Plan are accepted, and that improvements to the buildings required in order to prevent run-off are implemented prior to use.

13. Conclusions and Recommendations

I conclude that the proposed change of use would be acceptable subject to conditions limiting the use to pre-treated materials only and subject to the Nutrient Management Plans required to use such materials within the landholding.

I recommend therefore that the proposed change of use be granted planning permission for the following reasons and considerations.

REASONS AND CONSIDERATIONS

The proposed development constitutes a change of use only for the storage of biosolids and related materials on existing agricultural premises, and the material and its use will be subject to regulatory control for the application of such materials in agricultural use. It is considered that having regard to the historical use of the site for agricultural storage, that subject to the conditions set out below, the proposed change of use would not seriously injure the amenities of the area or reduce property values, would not constitute a health hazard or pollution risk, and would not cause traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by further plans and particulars lodged on the 8th day of December 2011, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars. In default of agreement, the matters in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The structures shall be used solely for the purposes outlined in the application and in correspondence with An Bord Pleanála, and no other use shall take place without benefit of a further planning permission, notwithstanding the exempted development provisions of the Planning & Development Regulations 2001, as amended. Only pretreated biosolids shall be accepted at the site.

Reason: In the interest of clarity.

3. No storage of biosolids shall take place prior to issuing by Cork County Council of the full Certificate of Registration under SI 32 of 2010 and that

written confirmation from the County Council confirms that all required upgrades to the buildings and yard have been completed to their satisfaction.

Reason: In the interest of preventing pollution.

4. All handling and storage of materials within the yard shall be in accordance with the requirements of the Certificate of Registration under SI 32 of 2010 and the recommendations of the 'Code of Good Practice for the Use of Biosolids in Agriculture' issued by the Department of Environment, Community and Local Government. Loading, unloading and handling of organic waste materials shall take place within sheds 1 & 2 only.

Reason: To prevent odour and pollution.

5. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard-
 - a) Uncontaminated surface water run-off shall be disposed of directly in a sealed system, and
 - b) All soiled waters shall be directed to a storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

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

6. The operator of the site shall maintain sufficient and continuous vermin control at the site.

Reason: To safeguard the amenities of the area.

Philip Davis,
Inspectorate.
2nd May 2012