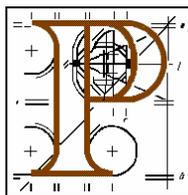


An Bord Pleanála



Inspector's Report

PL24.242298

DEVELOPMENT: Permission for three new agricultural sheds and an associated underground slurry tank, and for the construction of a new walled silage pit and ancillary site works

- at Carrigavantry, Tramore, County Waterford.

PLANNING APPLICATION

Planning Authority: Waterford County Council

Planning Authority Reg. No.: 13/34

Applicant: Martin Kiely

Application Type: Permission

Planning Authority Decision: **GRANT PERMISSION**
subject to 6 Conditions

APPEAL

Appellant: Patrick Kiely

Type of Appeal: **THIRD PARTY**

Observer: None

DATE OF SITE INSPECTION: 4th October, 2013.

INSPECTOR: Dermot Kelly

REPORT FORMAT

This report follows my examination of this appeal including reading the documents on file, and follows a Site Inspection on 4th October, 2013 which included the Photographs in Appendix B of this report. These Photographs were taken with an Olympus OM2 SLR film camera fitted with a 50mm fixed-focus standard lens which approximates normal viewing in short distance views.

1. SITE LOCATION
2. SITE DESCRIPTION
3. PROPOSED DEVELOPMENT
4. NOTIFICATION OF DECISION OF PLANNING AUTHORITY
Submissions and Relevant Reports
5. APPEAL GROUNDS
6. APPEAL RESPONSES
7. PLANNING HISTORY
8. DEVELOPMENT PLAN
9. PLANNING ASSESSMENT – Issues and Evaluation
10. CONCLUSIONS AND RECOMMENDATION

APPENDICES

- APPENDIX A - LOCATION MAP
- APPENDIX B - PHOTOGRAPHS (incl. KEY PLAN)

1. SITE LOCATION

The appeal site is located at Carrickavantry in a rural area approximately 2 kilometres to the north-west of the settlement area of Tramore town in County Waterford, as indicated on **APPENDIX A - LOCATION MAP**.

2. SITE DESCRIPTION

2.1 The appeal site lands at Carrickavantry, Tramore, County Waterford are approximately 0.47 hectares in area and the existing buildings on the site are approximately 547 square metres in area as submitted.

2.2 The Planning Report for the Planning Authority under 'Site Assessment' included stating as follows:

"The site was visited on the 29th May, 2013. It is located to the west of the L4058-0 (local primary) with access to the site via a private roadway that also provides access to a number of dwellings. The settlement of Tramore is located east of the site. The stated area of the site is 0.47 hectares and permission is sought for 3 no. agricultural sheds, an associated underground slurry tank and for the construction of a new walled silage pit."

2.3 The attached Photographs in **APPENDIX B – PHOTOGRAPHS** (including Key Plan which indicates the approximate Photograph locations) illustrate the nature of the appeal site and its context.

3. PROPOSED DEVELOPMENT

3.1 Planning Application

The site area is stated as 0.47 hectares. The proposed development comprises as specified in the public notices "Permission for three new agricultural sheds and an associated underground slurry tank, and for the construction of a new walled silage pit and ancillary site works at Carrigavantry, Tramore, County Waterford."

The Planning Report for the Planning Authority noted as follows:

"The proposed silage pit is located 2.5 metres from the boundary with the neighbouring residential property. The location of the existing silage pit has not been indicated and no justification has been provided in respect of the proposed location and the workings of the farm. On the

basis of the submitted information it is considered that the location of the silage pit would detract from the residential amenity of the neighbouring property.”

3.2 Further Information Request

The Planning Authority by letter dated 4th June, 2013 sought Further Information as specified, as follows:

“Having regard to the location of silage pit, in close proximity to the boundary with the neighbouring property it is considered that the proposal would detract from the residential amenity of the neighbouring property.

In order to proceed the following additional information shall be submitted:-

1. Revised proposals shall be submitted relocating the silage pit to the south-west of the site.
2. A revised site layout shall be submitted indicating the existing and proposed ground levels/finished floor level at the location of all sheds and the silage pit.
3. A completed Agricultural Development Form shall be submitted.
4. A revised site layout shall be submitted indicating full drainage arrangements for the farm.”

3.3 Further Information Submission

Further Information was received on 26th June, 2013 including as follows: Revised drawings were received in response to the Further Information Request and also a completed Agricultural Development Form was submitted.

3.4 Submitted Drawings and Documentation

The drawings and documentation received 16th April, 2013 and 26th June, 2013 have been examined and are noted.

4. NOTIFICATION OF DECISION OF PLANNING AUTHORITY - Submissions and Relevant Reports

4.1 Third Party Submission on Planning Application

The Submission received is noted. The Planning Report for the Planning Authority summarised the Third Party Submission received as follows:

“Proximity of the silage pit to the neighbouring property, Impact on residential amenity, Risk of contamination, No drainage details provided, Silage pit – source of strong odour, Information missing from submitted drawings, Impact of protected species – frogs, Exempt development.”

4.2 Third Party Submission on Further Information Submission

No submission was received.

4.3 First Planning Report

This report, dated 30th May 2013, included as follows: The Relevant Planning History of the area and the Agricultural Zoning Objective in the Development Plan for the area were noted. A Site Description followed which included noting the location of the proposed silage pit close to the eastern site boundary. It was stated as follows:

“With regard to the proposed storage shed, having regard to the existing established screening along the eastern boundary of the site and as the sheds are an extension to an existing working farm, there is no objection to the principle of the sheds subject to there being no loss of light/overshadowing of the neighbouring property. Finished floor levels have not been indicated for shed no. 1 or 2 (further information required).”

The Third Party Submission received was summarised as stated. It was stated that Further Information as specified should be requested.

4.4 Final Planning Report

This Final Planning Report, dated 3rd July, 2013 included noting the Further Information Submission as follows:

“Revised proposals have been submitted omitting the silage pit. The shed to the east of the site has been re-orientated on site such that it is perpendicular to the public road and a 10.4 metre separation distance is provided between the shed and the eastern boundary of the site.

The finished floor level of the storage shed will be 1 metre higher than the existing ground level at front (north) end of the building and 2.25 metres higher than the existing ground level at the rear of the shed (south). Due to the gradient of the site the rear of the site will be built up to a level formation with the existing buildings to the front. To the south-west of the proposed straw bedded shed the levels will increase from 96.45 metres to 98.17 metres (finished floor level of shed 1.7 metres higher than the ground to the rear). To the rear of the storage

shed the levels will increase from 95.62 metres to 97.87 metres (2.25 metres between the existing ground level to the rear and the finished floor level of the storage shed). Notwithstanding the increase in ground levels, having regard to the setback of the shed from the neighbouring property, it is considered that the proposed storage shed will not result in a loss of light to the neighbouring property. A condition shall be attached for no ground works to take place within 2 metres of the eastern boundary of the site (to protect the existing screening from possible damage).

A completed Agricultural Development Form has been submitted. The development will not result in an increase in herd numbers.

With regard to the drainage arrangements for the development, the works are required to comply with the Nitrates Directive and as such will be regulated under this legislation.

A revised site layout shall be submitted indicating all ground works i.e. excavation and fill required for each structure.”

The Third Party Submission received was summarised as follows:

“Proximity of the silage pit to the neighbouring property, Impact on residential amenity, Risk of contamination, No drainage details provided, Silage pit – source of strong odour, Information missing from submitted drawings, Impact on protected species – frogs, Exempt development.”

The Final Planning Report included stating as follows:

“A submission on file states that the area is the home to a colony of frogs and that the proposed buildings will impact on a protected species. The site comprises of farmyard area and disturbed grassland. There are no watercourses or wetlands evident to suggest the presence of a wetland of habitat value that would be impacted by the proposed development. In the absence of any documentary evidence there is no objection to the principle of this development.”

Permission was recommended subject to the Conditions as stated in the notification of decision of the Planning Authority.

4.5 Notification of Decision of Planning Authority

The Planning Authority, Waterford County Council, issued a notification of decision to **GRANT PERMISSION** for the proposed development subject to 6 Conditions including as follows:

Condition No. 1 requiring as follows:

1. The development shall be in accordance with drawings and details submitted to the Planning Authority on the 16th April, 2013 and as amended on the 26th June, 2013 except where altered or amended by conditions in this permission.

Reason: In the interest of orderly development and sustainable development in the area.

Condition No. 2 requiring as follows:

- “2. Prior to the commencement of development a revised site layout shall be submitted to, and agreed in writing with, the Planning Authority indicating all ground works required for the proposed development i.e. excavation and fill required for the sheds. No ground works shall take place within 2 metres of the eastern boundary of the site.

Reason: In the interest of orderly development.”

5. APPEAL GROUNDS

Third Party Appeal

The appeal submissions included as follows:

“My client, Patrick Kiely, who lives with his family in the house immediately to the east of the application site, objected to the application on the grounds the development would adversely impact on their residential amenity and property. In particular he was concerned about the proximity of the storage of silage and structures to the family home, the impact of odours and the fact the development was uphill of the house thereby posing a serious health risk. In addition he highlighted that the area on which the proposed silage pit was to be developed had in fact recently been filled with waste material, the make-up and source of which was unknown. This material is still present on site. A copy of his objection is attached.”

It was stated that the Appellant’s dwelling was located 5 metres from the common boundary and that

“Following a request for further information the silage pit was deleted and the shed closest to my client’s house moved marginally further away from the common boundary and re-orientated. The proposed slatted shed (shed 2) and straw bedded shed (shed 3) remained as originally submitted.

The response to the further information was not deemed significant by the Planning Authority and my client was therefore not afforded the opportunity to make further submissions.”

The submitted ‘Grounds of Appeal’ included stating as follows:

“In recent days over 100 bales of wrapped silage have been deposited along the common boundary with my client’s family home, including over part of the area which was filled with waste material earlier this year and where the silage pit was originally proposed.”, and
“Given the known ground conditions to the west of my client’s home, any silage stored there, whether baled and wrapped or not, poses a very serious threat to ground water contamination and public health. Effluent will seep into the existing french drains which form part of the field drainage and watercourse network. Also, the odours, flies etc., arising from storing silage so close to a dwelling and garden will inevitably have a severely adverse impact on my client’s residential amenity. My client’s family regularly sit out at the side of the conservatory and on their raised deck where they enjoy the sun. They will be denied this basic amenity if silage is stored close by. They will also be denied the basic right to fresh air through open windows and doors if silage is permitted to be stored next to them.”, and also

“To contain silage in accordance with Nitrates legislation it will be necessary to provide an impermeable base with drainage channels connected to an effluent storage tank. By definition (Section 4 of the Planning and Development Acts 2000-2010) this base is classed as a ‘structure’. Class 8 of the Planning and Development Regulations 2001 to 2012 does not exempt the development of ‘structures’ for the storage of silage within 100 metres of a house without the house owners written consent. By implication, silage storage within 100 metres of a house has the potential to give rise to adverse amenity impacts such as odours, flies, etc. Storing silage within 5 metres of a house therefore has a very serious impact on residential amenity.

Given that planning permission will be required to store silage, unless the Applicant stores it in an existing building with drainage channels to an effluent tank, it would seem reasonable that, if the Board is minded to grant any permission, it would apply a planning condition prohibiting the storage of silage anywhere east of the existing farm buildings. Such a condition could also provide the Planning Authority with a definitive yardstick against to enforce against unauthorised storage of silage, such as the storage which is going on at present.”, and

“The proposed shed, which is to be constructed to between 1 metre and 2.25 metres above existing ground levels, will be between 7.2 metres and 8.45 metres above existing ground level. Being so close to my client’s home and garden this shed will have an overbearing impact on their amenity and cut short their evening sunshine and light in the garden. In addition, to block the view of the structure they will have to maintain the hedge at a higher level for screening purposes which will further overshadow their garden and conservatory.

Locating the store adjacent or close to the existing sheds will not have such an adverse impact on the residential amenity my client and his family have entitlement to.”, and

“The proposed slatted unit (shed 2) is located within 35 metres of my client’s house. The odours from this structure, which is up wind of the house, will cause unacceptable nuisance and loss of residential amenity.

The north-west and north-east ends of the slatted unit are open to the elements which will allow odours to easily escape into the outside atmosphere and be blown towards my client’s house. Noise from the livestock will also be a nuisance so close to the house.”

The ‘Grounds of Appeal’ also included submitting as follows:

“A combination of the existing straw bedded accommodation, the proposed straw bedded accommodation and the accommodation in the large slatted shed all point to a proposed significant intensification of use, or potential future intensification in use.

The Applicant should be required to justify why additional animal housing is required and not replacement modern housing which could be accommodated on the footprint of existing buildings.”, and

“If a new slatted unit can be justified by the Applicant as essential along with the existing and proposed straw bedded sheds, the new slatted unit could be located immediately to the north-east of the existing buildings or in the south-west corner of the farmyard field. This may require a redesign of the slatted unit to enclose all sides and protect animals from the elements, but this would seem justifiable in any event to contain odours and noise and protect my client’s amenity. After all, the suggested alternative locations of the proposed slatted shed would still only be a minimum of 60 metres from my client’s house which is 40 metres short of the minimum distance that exemption under the Planning and Development Regulations could be claimed for such a unit (subject to all other criteria). These possible alternatives are shown on a plan attached to the end of this appeal.

Locating the proposed storage shed (1) adjacent to the suggested location of the proposed slatted shed immediately to the east of the existing buildings would allow all the farm buildings to be clustered. This would be desirable as it would keep them as far from my client's family home as possible. From a visual perspective it would also be a desirable solution given the location of the farm in a designated Scenic Area where the Development Plan seeks to minimise the visual impact of new development.

Finally in terms of regulating the proposed storage shed (1), it is requested that a condition be attached prohibiting it being used to store silage or livestock.", and under 'Conclusion' as follows:

"My client does not wish to hinder improvements on the farm but is wholly opposed to the proposals as submitted and revised as a result of the further information. All aspects of the development as proposed will have a detrimental impact on his and his family's residential amenity and represent a serious risk to public health.

If the Board is in a position to consider the changes as suggested in this Appeal and as outlined on the attached plan, my client would have no objections to planning permission being granted subject to conditions regulating the use of the proposed storage shed to prohibit storing silage or keeping livestock and prohibiting silage being stored to the east of the existing farm buildings." The attached Drawing is noted.

6. APPEAL RESPONSES

6.1 Applicant's Appeal Response

This Appeal Response received 30th August, 2013 included as follows: "However following the objection from Mr. Patrick Kiely that the silage pit was too close to his house and would cause smells, it was decided by Mr. Martin Kiely to remove the silage pit altogether from the application, as it was not practical to locate it in another location that would be any further from the house.

Instead Mr. Martin Kiely has decided to continue to use baled silage for his winter feed, despite the fact that it is a more expensive method of preserving the crop. As each bale is individually wrapped all odours and any possible effluent are completely sealed in and contained within the wrap. This is why the bales can be stored without the expense of building a silage slab, (in full compliance with Department of Agriculture Guidelines and the Nitrates Directive) and there is no possible odours released to affect Mr. Patrick Kiely or his family. It is incorrect to state that an impermeable base with drainage channels connected to an

effluent storage tank is required for the storage of wrapped silage bales, this is only required for pit silage. Nitrates Directive states that:- 'If storing silage/haylage bales more than 20 metres from a watercourse on grass or hardcore, there must be no evidence of effluent discharge, otherwise a penalty will apply'.

'Under the Nitrates Regulations there is no restriction on the number of bales high that silage can be stored on grass or hardcore provided that there is no discharge of effluent from the bales'. (quotes taken from Teagasc Advisory Newsletter dated August, 2012)", and

"Mr. Martin Kiely has made a major compromise on his original application by removing the open silage pit completely and restricting himself to using just baled silage but is happy to do so as it eliminates the odour issue which was the objection raised by Mr. Patrick Kiely during the planning process.

It is my client's intention to store the wrapped bales in the same location as has been used in the past, Mr. Patrick Kiely has never before expressed any issue with the storing of the bales in this location, or of any odour or effluent issues effecting him. The bales have and will be stored in full compliance with all relevant guidelines including the existing Nitrates guidelines.", and also

"Following the objection raised by Mr. Patrick Kiely the proposed storage shed (1) was moved a considerable distance from the boundary in order to remove any concerns which were raised by his objection to the planning application. It could not be moved any further east as sufficient access for machinery had to be maintained for the slurry agitation point on West elevation of shed (2). Given the distance that Shed (1) is now from the house (over 15 metres from the nearest corner) and given the shed is 6 metres high, if the hedge is maintained at a height of over 3 metres as stated by Mr. Patrick Kiely then a person over 6 foot tall would be unable to even see the top of the shed. In fact the shed would need to be a further 1.3 metres higher for any part of the roof to be visible, see Drawing. 1 below.

Given this it is unreasonable to state that the proposed shed will have an overbearing impact on Mr. Patrick Kiely's house.", and

"The proposed slatted unit (shed 2) as stated is located over 35 metres from the house, it is also located at the opposite side to proposed shed 1 which will act as a wind block between the shed and the house.

Also the only time that any noticeable amounts of odour will be generated from this shed will be during the agitation of the underground slatted tanks in preparation for spreading the slurry on the land. This normal agricultural practice on a tank of this size would take

approximately 1-3 hours to complete, and would happen once or on the rare occasion twice in a year.”, and also
“The locations chosen for the proposed buildings are the most suitable given constraints on the site and the contours. Mr. Martin Kiely has not looked for exemption from planning, therefore the distances stated are not relevant.”

6.2 Appeal Observation

No Appeal Observation was received.

6.3 Planning Authority Appeal Response

No Appeal Response was received.

7. PLANNING HISTORY

The Planning Report for the Planning Authority documented the Planning History of the appeal site/area as follows:

“Same Site

No recent planning history on site.

Adjacent Site

99/1190 – Mr. Patrick Kiely – Erection of Dwelling, Biocycle Sewage System and Entrance – Permission.

99/680 – Mr. Martin Kiely – New Dormer Dwelling, Septic Tank, Garage, Percolation Area and Entrance – Permission.”

There is no reference to previous planning applications on the appeal site in the appeal submissions. The Planning Authority has forwarded a copy of ‘Enforcement File in Relation to PD13-134/PL24.242298’.

8. DEVELOPMENT PLAN

The provisions of the 2011-2017 Waterford County Development Plan have been considered, and in particular the following provisions:

The ‘Agriculture’ land use zoning objective for the appeal site as follows: “To provide for the development of agriculture and to protect and improve rural amenity”.

9. PLANNING ASSESSMENT – Issues and Evaluation

Further to my examination of the documents on file and the site inspection, it is considered that it is appropriate to undertake a planning assessment of the issues raised by the Applicant, the Planning Authority and the Appellant, in the course of this appeal, in regard to the proposed development.

I note the Planning Report for the Planning Authority under 'Site Assessment' included stating as follows:

"The site was visited on the 29th May, 2013. It is located to the west of the L4058-0 (local primary) with access to the site via a private roadway that also provides access to a number of dwellings. The settlement of Tramore is located east of the site. The stated area of the site is 0.47 hectares and permission is sought for 3 no. agricultural sheds, an associated underground slurry tank and for the construction of a new walled silage pit."

I note the Planning Report for the Planning Authority as follows:

"The proposed silage pit is located 2.5 metres from the boundary with the neighbouring residential property. The location of the existing silage pit has not been indicated and no justification has been provided in respect of the proposed location and the workings of the farm. On the basis of the submitted information it is considered that the location of the silage pit would detract from the residential amenity of the neighbouring property."

I note the Planning Authority by letter dated 4th June, 2013 sought Further Information as specified, as follows:

"Having regard to the location of silage pit, in close proximity to the boundary with the neighbouring property it is considered that the proposal would detract from the residential amenity of the neighbouring property.

In order to proceed the following additional information shall be submitted:-

1. Revised proposals shall be submitted relocating the silage pit to the south-west of the site.
2. A revised site layout shall be submitted indicating the existing and proposed ground levels/finished floor level at the location of all sheds and the silage pit.
3. A completed Agricultural Development Form shall be submitted.
4. A revised site layout shall be submitted indicating full drainage arrangements for the farm."

I note that the Planning Report for the Planning Authority summarised the Third Party Submission received as follows:

“Proximity of the silage pit to the neighbouring property, Impact on residential amenity, Risk of contamination, No drainage details provided, Silage pit – source of strong odour, Information missing from submitted drawings, Impact of protected species – frogs, Exempt development.”

I note that the Final Planning Report, dated 3rd July, 2013 included noting the Further Information Submission as follows:

“Revised proposals have been submitted omitting the silage pit. The shed to the east of the site has been re-orientated on site such that it is perpendicular to the public road and a 10.4 metre separation distance is provided between the shed and the eastern boundary of the site.”, and also as follows:

“Notwithstanding the increase in ground levels, having regard to the setback of the shed from the neighbouring property, it is considered that the proposed storage shed will not result in a loss of light to the neighbouring property. A condition shall be attached for no ground works to take place within 2 metres of the eastern boundary of the site (to protect the existing screening from possible damage).”

I note the Planning Authority, Waterford County Council, issued a notification of decision to **GRANT PERMISSION** for the proposed development subject to 6 Conditions including Condition No. 2:

“2. Prior to the commencement of development a revised site layout shall be submitted to, and agreed in writing with, the Planning Authority indicating all ground works required for the proposed development i.e. excavation and fill required for the sheds. No ground works shall take place within 2 metres of the eastern boundary of the site.

Reason: In the interest of orderly development.”

I note the documented Planning History for the site/area, and the ‘Agriculture’ land use zoning objective for the appeal site as follows:

“To provide for the development of agriculture and to protect and improve rural amenity” under the current Waterford County Development Plan.

I note the subsequent extensive Third Party Appeal Grounds on behalf of the Appellant who resides with his family in the residential property adjoining the application site to the east including as follows:

“Objected to the application on the grounds that development would adversely impact on their residential amenity and property. In particular

he was concerned about the proximity of the storage of silage and structures to the family home, the impact of odours and the fact the development was uphill of the house thereby posing a serious health risk. In addition he highlighted that the area on which the proposed silage pit was to be developed had in fact recently been filled with waste material, the make-up and source of which was unknown. This material is still present on site.”

In this regard I refer to the Photographs in Appendix B of this report including in particular the panoramic views over the appeal site (Photos 9-15) and the adjoining residential property to the east (Photos 9-11). I note the submitted ‘Grounds of Appeal’ included stating:

“In recent days over 100 bales of wrapped silage have been deposited along the common boundary with my client’s family home, including over part of the area which was filled with waste material earlier this year and where the silage pit was originally proposed.”, and
“Given the known ground conditions to the west of my client’s home, any silage stored there, whether baled and wrapped or not, poses a very serious threat to ground water contamination and public health,” and also as follows:

“My client’s family regularly sit out at the side of the conservatory and on their raised deck where they enjoy the sun. They will be denied this basic amenity if silage is stored close by. They will also be denied the basic right to fresh air through open windows and doors if silage is permitted to be stored next to them.”

In this regard I refer to Photographs 6-8 and again Photographs 9-15 which indicate the proximity of the deposited silage bales to the Appellant’s dwelling and the intervening tree-lined boundary. I also note the Third Party Appeal Grounds where submitted as follows:

“The proposed shed, which is to be constructed to between 1 metre and 2.25 metres above existing ground levels, will be between 7.2 metres and 8.45 metres above existing ground level. Being so close to my client’s home and garden this shed will have an overbearing impact on their amenity and cut short their evening sunshine and light in the garden. In addition, to block the view of the structure they will have to maintain the hedge at a higher level for screening purposes which will further overshadow their garden and conservatory.”

In this regard I refer in particular to Photograph 6 in Appendix B of this report which indicates the Third Party Appellant’s dwelling and to Photograph 10 in Appendix B which indicates the roof to the Appellant’s dwelling visible above the tree-lined boundary; and the revised location of the Proposed Storage Shed for Straw/Machinery as

indicated on the submitted revised Site Layout Drawing received 26th June, 2013, is noted with reference to Photos 6-8 in Appendix B.

I also note the Third Party Appeal Grounds where submitted:

“The proposed slatted unit (shed 2) is located within 35 metres of my client’s house. The odours from this structure, which is up wind of the house, will cause unacceptable nuisance and loss of residential amenity.

The north-west and north-east ends of the slatted unit are open to the elements which will allow odours to easily escape into the outside atmosphere and be blown towards my client’s house. Noise from the livestock will also be a nuisance so close to the house.”

I note also where submitted in the Appeal Grounds in regard to relocation of the proposed ‘new slatted unit’ “immediately to the north-east of the existing buildings or in the south-west corner of the farmyard field”, and also “the suggested alternative locations of the proposed slatted shed would still only be a minimum of 60 metres from my client’s house which is 40 metres short of the minimum distance that exemption under the Planning and Development Regulations could be claimed for such a unit (subject to all other criteria). These possible alternatives are shown on a plan attached to the end of this appeal.”, and also

“Locating the proposed storage shed (1) adjacent to the suggested location of the proposed slatted shed immediately to the east of the existing buildings would allow all the farm buildings to be clustered, and If the Board is in a position to consider the changes as suggested in this Appeal and as outlined on the attached plan, my client would have no objections to planning permission being granted subject to conditions regulating the use of the proposed storage shed to prohibit storing silage or keeping livestock and prohibiting silage being stored to the east of the existing farm buildings.” The attached Drawing is noted.

I note the subsequent Applicant’s Appeal Response where stated:

“It is incorrect to state that an impermeable base with drainage channels connected to an effluent storage tank is required for the storage of wrapped silage bales, this is only required for pit silage. Nitrates Directive states that:-

‘If storing silage/haylage bales more than 20 metres from a watercourse on grass or hardcore, there must be no evidence of effluent discharge, otherwise a penalty will apply’.

‘Under the Nitrates Regulations there is no restriction on the number of bales high that silage can be stored on grass or hardcore provided that

there is no discharge of effluent from the bales'. (quotes taken from Teagasc Advisory Newsletter dated August, 2012)."

However under this planning application, planning issues including the effect of the proposed development including the proposal for 'storage of wrapped silage bales' in close proximity to the adjoining residential property (again see Photographs 6-8 in Appendix B) are relevant. In my opinion such a proposed location for storage of wrapped storage bales is in principle unacceptable on planning grounds including visual amenity (again see Photographs 6-8 in Appendix B).

I note the Applicant's Appeal Response where stated in regard to the relocated Storage Shed under the revised Site Layout Plan:

"It could not be moved any further east as sufficient access for machinery had to be maintained for the slurry agitation point on West elevation of shed (2). Given the distance that Shed (1) is now from the house (over 15 metres from the nearest corner) and given the shed is 6 metres high, if the hedge is maintained at a height of over 3 metres as stated by Mr. Patrick Kiely then a person over 6 foot tall would be unable to even see the top of the shed. In fact the shed would need to be a further 1.3 metres higher for any part of the roof to be visible", and "The proposed slatted unit (shed 2) as stated is located over 35 metres from the house, it is also located at the opposite side to proposed shed 1 which will act as a wind block between the shed and the house.

Also the only time that any noticeable amounts of odour will be generated from this shed will be during the agitation of the underground slatted tanks in preparation for spreading the slurry on the land. This normal agricultural practice on a tank of this size would take approximately 1-3 hours to complete, and would happen once or on the rare occasion twice in a year.", and also

"The locations chosen for the proposed buildings are the most suitable given constraints on the site and the contours. Mr. Martin Kiely has not looked for exemption from planning, therefore the distances stated are not relevant."

Further to consideration of all the varying submissions on file, I consider that as stated above the storage of silage bales as existing on the site in such close proximity to the adjoining residential dwelling to the east to be in principle unacceptable from a planning viewpoint including by reason of potential nuisance and visual disamenity (see Photos 6-8 in Appendix B). Accordingly I consider that any decision to grant permission for the proposed development should include a Condition prohibiting the storage of silage/silage bales within a specified area of the appeal site adjoining the residential property to the east in the interest of residential amenity.

I also note the Third Party Appeal Grounds submissions in regard to the proximity of the proposed new Agricultural Sheds (3) to the adjoining residential property to the east and also that the proposed development comprises an extension to an existing established farmyard in this rural agricultural area. It is recommended in this regard that a Condition in any decision to grant permission for the proposed development should in addition to a condition specifying that no storage of silage/silage bales occurs within a distance of 25 metres from the boundaries of the residential property to the east, that such Condition should also require the submission of a revised Site Layout Plan to be submitted to the Planning Authority for agreement which would require that no part of any of the proposed three new Agricultural Sheds should be located within 25 metres of the eastern site boundary of the appeal site.

In conclusion having considered all the submissions on file I concur with the Planning Report for the Planning Authority where stated:

“Notwithstanding the abovementioned, having regard to the site’s location in the open countryside outside of a designated settlement, and its location on a working farm, it is considered that the principle of the proposed works would be acceptable provided the proposal did not have an adverse impact on residential and visual amenities in the area”, and I therefore recommend that permission be granted for the proposed agricultural development subject to revised Conditions as set out hereunder.

Appropriate Assessment

I note the Planning Report for the Planning Authority which under the Appropriate Assessment Screening Report ‘Screening Conclusion Statement’ concluded as stated: “Significant impacts can be ruled out”, in regard to the proposed development in relation to the European Natura 2000 Site as identified. Having regard to the location of the subject site and to the nature of the proposed development, and the intervening distance with the identified Natura 2000 site, I consider that no appropriate assessment issues arise in this case. In my opinion the proposed development either individually or in combination with other plans or projects, would not be likely to have a significant effect on a Natura 2000 Site.

10. CONCLUSIONS AND RECOMMENDATION

In conclusion, further to the above assessment of matters pertaining to this appeal, including consideration of the submissions of each party to

the appeal, and including the site inspection, I consider that the proposed development would be in accordance with the proper planning and sustainable development of the area having regard to the relevant provisions of the Development Plan, which are considered reasonable, and I recommend that permission be granted for the proposed development for the stated Reasons and Considerations in the First Schedule and subject to the Conditions as stated in the Second Schedule below.

DECISION

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the Reasons and Considerations under and subject to the Conditions set out below.

REASONS AND CONSIDERATIONS

Having regard to the 'Agriculture' land use zoning objective for the area under the 2011-2017 Waterford County Development Plan and the pattern of development in the area including the existing agricultural farmyard in the area, it is considered that, subject to compliance with the Conditions in the Second Schedule, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would not be prejudicial to public health. 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 revised by drawings received 26th day of June 2013, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Prior to commencement of development a revised Site Layout Plan shall be submitted to and agreed in writing with the planning authority indicating all ground works required for the proposed development i.e. excavation and fill required for the proposed agricultural sheds. No

ground works shall take place within 20 metres of the eastern boundary of the site. The revised Site Layout Plan shall incorporate the following:

- (1) The proposed three new agricultural sheds shall be relocated within the site in a revised layout such that no part of any of the three buildings are located closer than 25 metres from the eastern site boundary with the adjoining dwellinghouse.
- (2) No storage of silage/silage bales shall occur within 25 metres of the site boundaries of this adjoining dwellinghouse.

Reason: In the interest of orderly development and the residential amenities of the area.

3. The slatted shed shall be used only in strict accordance with a management schedule to be submitted to and agreed in writing with the planning authority, prior to commencement of development. The management schedule shall be in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2010 (SI No. 610 of 2010), and shall include as follows:
 - (1) Details of the number and types of animals to be housed.
 - (2) The arrangements for the collection, storage and disposal of slurry.
 - (3) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

Reason: In order to avoid pollution and to protect residential amenity.

4. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2009 (SI No. 610 of 2010).

Reason: To ensure the satisfactory disposal of waste material, in the interest of amenity, public health and to prevent pollution of watercourses.

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. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.

Reason: In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

- 7. (a) All excavated material shall where practicable be reused on site. Any surplus excavated material to be removed from the site shall be brought to an authorised facility. Prior to removal of any surplus material, Waterford County Council shall be informed of the approximate quantity of material and the location of the proposed facility. No material shall be removed from the site until such times as the planning authority has authorised its removal.
- (b) Prior to the commencement of development details of the source of the infill material shall be submitted to and agreed in writing with the planning authority. If deemed necessary, the applicant shall apply for and be granted a Waste Permit prior to any works being undertaken.

Reason: In the interest of orderly development.

DERMOT KELLY
SENIOR PLANNING INSPECTOR

11th November, 2013.

sg

APPENDIX A - LOCATION MAP
APPENDIX B - PHOTOGRAPHS (incl. KEY PLAN)