



An
Bord
Pleanála

Inspector's Report

ABP-305217-19

Development	Retention of a cattle housing unit with underground slurry storage tank and other existing agricultural buildings and all site works
Location	Hightown, Coralstown, Mullingar, Co. Westmeath
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	186333
Applicant(s)	Donie and Maria Coffey
Type of Application	Retention
Planning Authority Decision	To grant with conditions
Type of Appeal	Third Party
Appellant(s)	Rory McCarthy
Observer(s)	None
Date of Site Inspection	26 th November 2019
Inspector	Deirdre MacGabhann

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Westmeath County Development Plan 2014 - 2020	6
5.2. Natural Heritage Designations	7
5.3. EIA Screening	7
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Applicant Response	8
6.3. Planning Authority Response/Observations/Further Responses.....	9
7.0 Assessment	9
7.2. Unauthorised Development and Principle of Retention.....	9
7.3. Impact on Residential Amenity and Property Value	10
7.4. Water Management.....	11
7.5. Appropriate assessment.	12
8.0 Recommendation.....	13
9.0 Reasons and Considerations.....	13

1.0 Site Location and Description

1.1. The 0.3ha appeal site lies c.7km to the north west of Kinnegad in the townland of Hightown, Coralstown, County Westmeath. It lies to the south of a county road (L-1025-0), which joins the M4 c.2km to the north east of the appeal site. The site lies at the southern end of a cul-de-sac off the county road and comprises a number of farm buildings constructed around a fenced and gated farm yard. At the time of site inspection, the buildings were in use for a range of agricultural uses including for the housing of animals and the storage of machinery and food. The applicant's residential property lies to the north of the farmyard, separated from it by a laneway, and the appellant's property lies to the south of the farmyard.

2.0 Proposed Development

2.1. The proposed development, as revised by way of significant further information submitted in July 2019, comprises the retention of:

- A cattle housing unit and underground slurry storage tank (190sqm) built in 2017,
- Two agricultural sheds for dry fodder store, Shed A (220sqm) built in 2013 and Shed B (86sqm) built in 2017.

2.2. The cattle housing unit and agricultural sheds are located to the east of the farm yard. Shed B lies to the east of the appellant's property and the cattle housing unit to the east of this building. It is stated in the application that water supply on site is from a well and that surface water will be disposed of into a soakpit.

2.3. Submitted with the planning application is a site layout plan, indicating buildings on the site in 2011. It refers to seven other structures within the farmyard, to the west of the subject buildings, numbered A1 to A7 on the 'Site Layout Plan Prior to November 2011' (submitted in July 2019). In total the buildings have an area of c.500sqm and house cattle/sheep, machinery and feed.

2.4. A letter from an agricultural consultant is included with the planning application. It states that the applicant farms within the constraints/guidelines of REPS, AEOS and GLAS and that the applicant has constructed a cattle shed with slatted containment

tank to facilitate the housing of stock and collection of slurry. It is also stated that the shed will ensure compliance with the Nitrates regulations going forward.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 26th July 2019 the planning authority decided to grant permission for the development subject to three conditions, including:

- No. 2 – Sets out environmental controls for works (to comply with requirements of the Department of Agriculture, Food and the Marine), movement of top soil, management of slurry, soiled water etc, and land spreading of organic waste.
- No. 3 – Restricts the permission to the proposals contained in the application only and not to any other structure/use.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 7th January 2019 – Refers to the planning history of the site (including an enforcement letter issued regarding an unauthorised shed), the submissions/observations and technical reports. It considers that the development complies, in principle, with policies of the County Development Plan, subject to amenity and environmental safeguards and that no issues of Appropriate Assessment arise. The report recommends further information in respect of the site layout plan (to accurately reflect buildings and other significant structures on/near the site), details of the buildings constructed on the site and compliance with the Planning and Development Act/Regulations.
- 26th July 2019 – Considers that the matters raised have been adequately addressed and recommends granting retention subject to conditions.

3.2.2. Other Technical Reports

- Area Engineer (3rd December 2018) – No objections subject to conditions.

- Environment (5th December 2018 and 18th July 2019) - No objections subject to conditions.

3.3. Prescribed Bodies

- Irish Water (5th November 2018) – No objections.

3.4. Third Party Observations

3.4.1. One third party, the appellant, makes a number of observations on the proposed development and raises the following matters:

- Inadequate details. The site layout plan fails to show all buildings/accurately show buildings constructed on site, including sheep shed which is under 4-5 feet from the gable end of the observer's residence and the location of the observer's bored well. No reference is made to the location of the underground storage tank(s), the relative levels on site or yard drainage system (floodwater could enter slurry tanks) in plans. The application does not meet the requirements of the Planning and Development Regulations, 2001 (as amended), part 4, article 23(1).
- Unauthorised development. Apart from 2 sheds on the site, the area was undeveloped until post 2000. The structures exceed the limits set out in the Planning and Development Regulations. The majority of the structures on site are unauthorised, including extension of the building immediately north of the appellant's gable (which is being used to house sheep), and are not exempted development. Retention has only been sought for the structures built since 2011. Applicant fails to seek a comprehensive retrospective permission and information given on the other unauthorised structures is limited (e.g. date of construction, evidence of planning permission). The proposed development should be refused on the grounds that it would facilitate unauthorised development proximate to the appellant's property.
- Impact on residential amenity. The development as constructed, due to its proximity, the odours, noise and traffic associated with the use of the unauthorised structures impinges on the appellant's residential amenity.

Proximity of sheep shed to gable wall of residence. Upstairs bedroom in observer's property can no longer be used due to smell from shed.

- No environmental impact assessment provided. Escape of slurry gases from slurry pit, odour when tanks are being emptied or agitated. Health and safety hazard.
- Appropriate assessment. No appropriate assessment carried out. Substantial number of structures on site and no information on animal numbers or practices. Therefore, it would not be possible for the planning authority to carry out an accurate screening exercise.
- Public health/water. No details of fall in ground between the appellant's property and the appeal site. Impact of the proposed development on the appellant's well. No drainage system for site. Risk of flooding of slurry tanks.

4.0 Planning History

- 4.1. Under PA ref. ENF 17078, a warning letter to the applicants was issued in respect of the construction of an unauthorised shed on the appeal site.

5.0 Policy Context

5.1. Westmeath County Development Plan 2014 - 2020

- 5.1.1. Policies of the Westmeath County Development Plan generally support the development of agriculture in the county subject to environmental safeguards.

These include:

- **Section 2.15, Preferred Development Strategy** supports the growth of the sector.
- **Section 3.35, General Agriculture Policies and Objective.** Seek to support agricultural development, protect the viability of farms and ensure compliance with environmental safeguards (e.g. visual amenity, protection of wildlife habitats) and legislation on water quality. (Policies P-GA1 to 4).

- **Section 11.24, Agricultural Waste.** States that the Council will exercise its powers under other legislation in respect of the storage and management of waste and phosphate control measures.
- **Section 11.25, Agricultural Buildings.** State that the planning authority will take account of a number of factors in relation to proposals for new agricultural buildings including proximity to adjacent dwellings, utilisation of natural landscape as screening and waste management in terms of storage and disposal.
- **Section 14.6.5, Intensive Agriculture.** Such proposals will be permitted where they would not result in a traffic hazard, have an unacceptable impact on soil, groundwater or rural amenities and where it is demonstrated that wastes and slurries can be treated in an environmentally friendly manner.

5.2. Natural Heritage Designations

- 5.2.1. The nearest sites of nature conservation interest lie c.1.5km to the north and south of the site and comprises Royal Canal a proposed Natural Heritage Area (site code 002103) and Milltownpass Bog Natural Heritage Area (site code 002323). Further east, c.7.5km east of the site is Mount Hevey Bog, also a proposed NHA (site code 001584) and Special Area of Conservation (site code 002342) and c.10.5km to the west is Lough Ennell a proposed NHA/SAC (site code 000685) and Special Protection Area (site code 004044).

5.3. EIA Screening

- 5.3.1. The proposed development is of a type that constitutes an EIA project (involving construction works and demolition). However, it is modest in scale and comprises an agricultural development in a largely agricultural area and on a site which is removed from any environmentally sensitive sites. Consequently, there is, therefore, no real likelihood of significant effects on the environment to warrant environmental impact assessment.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The third-party repeats concerns raised in observations (see above).

6.2. Applicant Response

6.2.1. The applicant makes the following response to the appeal:

- In 2000 there were 6 no. buildings on the farmyard with one three bay cattle shed and all other buildings playing their part on an existing working farmyard with sounds and odours. The appellant purchased his property in 2001/2002 when the farm was in full operation and in full view.
- No appropriate assessment report was requested. No cattle housing has been built on the farm between 1997 and 2017 and a report by the Farm Advisor has been submitted with the application. The planning application and appeal is only concerned with the farmyard adjacent to the appellant's dwelling.
- The position of the well on the appellant's property is marked. Distances can be measured from this. It has not been used for many years as the property is connected to the mains. The appellant's septic tank is located less than 10m from the well with discharge flowing on the applicant's property during heavy rainfall.
- The farmyard is screened from the appellant's dwelling by an evergreen hedge >8m high. The shed to the north of it has not been modified since 1993. The appellant gave verbal consent for the cattle housing built in 2017 (the subject of retention). The type of farm is not intense and stock numbers have remained constant. The applicant has taken part in a number of farmyard schemes (Glos and REPS) and follows good farming practice. The farm is Quality Assured as graded by the Department of Agriculture and complies with the Nitrate Directive.

6.3. **Planning Authority Response/Observations/Further Responses**

- None

7.0 **Assessment**

7.1. Having regard to the submission on file and my inspection of the appeal site, key matters for this appeal are:

- Unauthorised development and principle of retention.
- Impact on residential amenity and property value.
- Water management.
- Appropriate assessment.

7.2. The appellant also refers to inadequate details of the plans submitted. However, I note that most of these comments were made in advance of the submission of further information. Other matters can be addressed by reading key measurements off the plans. I do note however that the building for retention (cattle housing unit) appears to be drawn incorrectly as, in practice, it shares a southern building line with that of Shed B which is not reflected in the plans drawn.

7.3. Health and safety matters referred to by the appellant, in respect of slurry odour, is not a planning matter and is outside the scope of this appeal. Impact of odour on residential amenity are discussed below.

7.4. **Unauthorised Development and Principle of Retention**

7.4.1. The proposed development comprises retention of three agricultural buildings on the subject farm yard:

- 'Shed A' – To the north east of the site. This is stated to be a dry fodder store with a floor area of 220sqm built in 2013.
- 'Shed B' – To the south of the site, extending to the rear of the appellant's property. This is also stated to be a dry fodder store with a floor area of 86sqm built in 2017.
- 'Building for retention' – Shed to the south east of the appeal site, east of Shed B and south of Shed A. This building is stated to be 190sqm in size

and comprises a cattle housing unit with underground slurry storage tank (see Section X-X, Elevation and Plans. 1/11/2018)

- 7.4.2. Policies of the County Development Plan generally support agricultural development within the County subject to environmental safeguards. Within this context, the proposed retention of constructed structures is acceptable in principle. Environmental safeguards are discussed below.
- 7.4.3. Another seven building are in the farm yard, nos. A1 to A7 on the 'Site Layout Plan Prior to November 2011'. These seven buildings have a total floor area of c.500sqm.
- 7.4.4. The farmyard structures are not included in the application for retention on the grounds that these have been in place since 2011. In this regard I refer to the Board to the attached OS maps for 2000 and 2005-2012 which would suggest that the farmyard has progressively enlarged over the period since 2000 (for example with A4 added by 2005, A1 by 2012). Further, there is no information on file regarding the number and type of stock used on site, how this relates to the volume of slurry required to be stored on site, or clarity regarding the current use of each structure. This has implications for the environmental emissions arising from the farmyard, for example, noise, odour and provide a benchmark for future development.
- 7.4.5. Therefore, whilst I would accept that enforcement action cannot be taken in respect of these structures, the structures do not have permission and any application for the farmyard should properly include all of the structures in order to properly examine the merits of the development. In the absence of this, the application before the Board is piecemeal, and the proposed development would be predicated on a largely unauthorised farmyard.

7.5. Impact on Residential Amenity and Property Value

- 7.5.1. The appellant's property lies south west of the existing farm complex and south west of the structures for retention. The 'Building for Retention' and Shed A are further from the appellant's property than most of the existing structures on the farmyard and are hidden from it by existing buildings (notably A3, A4 and A5). Shed B extends alongside and partly across the appellant's rear yard/garden and encroaches on it. However, in practice there are substantial mature trees along the

boundary of the appellant's property which obscures views of the Shed A from the property.

- 7.5.2. The appellant refers to the proximity of and odours from noise and traffic associated with the use of the unauthorised structures impinging on the appellant's residential amenity. At the time of site inspection, I noticed little odour or traffic from the farmyard. I also noted that it was well kept, clean and tidy. Notwithstanding this, I would accept that the proximity of the appellant's residential property to the farmyard would make it vulnerable to noise and odours at particular times, which underline the need for a comprehensive assessment. In this regard, the appellant refers to use of shed A7 by sheep and to emission from the shed which impact on odour in a bedroom of his property. Whilst I accept that these issues may arise, the shed referred to is not included in the application for retention and it is not possible to consider the use of the shed within the context of the appeal, or the management of the structures on site as whole in order to alleviate potential issues arising from the proximity of the agricultural and residential properties.

7.6. **Water Management.**

- 7.6.1. The appellant raises concerns regarding the management of surface water and the impact of the proposed development on his well. Contrary to this the applicant has indicated that the property is supplied by the public water main. Notwithstanding this, with regard to surface water, there is no information presented on the means to manage surface water within the farmyard e.g. discharge point to soakaway or means to separate contaminated and uncontaminated water. However, site levels within the farmyard would suggest that surface water would fall to the south east. There is no information on levels within the appellant's landholding and it is not clear therefore how surface water moves (if at all) between the two sites. If the Board are minded to grant permission for the development, this matter could be addressed by way of further information or condition.
- 7.6.2. The slurry tank for retention, under the 'Building for Retention' if constructed to Department of Agriculture standard would have no interface with the water environment.

7.7. **Appropriate assessment.**

- 7.7.1. **European sites.** As stated above, the appeal site is from European sites, with the nearest ones lying c.7.5km west of the appeal site is Mount Hevey Bog, an SAC (site code 002342) and c.10.5km to the west is Lough Ennell SPA (site code 004044).
- 7.7.2. **Conservation interests.** Conservation interests of the two European sites are:
- Mount Hevey Bog SPA - Active raised bogs, degraded raised bogs still capable of natural regeneration and depressions on peat substrates of the Rhynchosporion.
 - Lough Ennell SAC - Alkaline fens.
 - Lough Ennell SPA - Pochard (*Aythya ferina*), tufted Duck (*Aythya fuligula*), Coot (*Fulica atra*), Wetland and Waterbirds.
- 7.7.3. Conservation objectives are to maintain the favourable conservation condition of the identified habitats and species.
- 7.7.4. **Potential effects.** Potential effects could arise if there was connectivity between the appeal site and European sites. There is little information on file regarding surface water courses in the vicinity of the site, but from OS maps (see attachments), it would appear that the site would drain to a surface water course to the south east of the site, which discharges into Kinnegad River. It is not clear if Kinnegad River flows through Mount Hevey Bog before discharging into the River Deel, part of the River Boyne and river Blackwater SAC (see attachments), but there is the possibility therefore of connectivity to a European site.
- 7.7.5. **Likelihood of Significant Effects.** As stated above, discharges from the appeal site will be limited to surface water, with slurry held within the underground tanks for discharge offsite under a system controlled and administrated by the Department of Agriculture/Westmeath County Council. If there is no attenuation on site and surface water carries sediment from the farmyard, pollutants from the site could enter ground or surface water bodies. However, having regard to the distance of the subject site from the nearest European site (c.7.5km) and the diluting and attenuating effects of intermediary soils/water bodies there is little likelihood of significant effect on downstream European sites.

7.7.6. **Appropriate Assessment conclusion.** Having regard to the foregoing, it is my opinion that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 004044 or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. I recommend that permission for the proposed development be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

The proposed development is dependent on the operation of the existing farmyard complex that includes buildings, which on the basis of the submissions made in connection with the application and appeal, appear to be unauthorised. It is considered, therefore, that the proposed development would comprises a piecemeal approach to development and, located in close proximity to an existing residential dwelling, could detract from the visual and residential amenity of the property. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Deirdre MacGabhann

Planning Inspector

18th December 2019