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Bord  
Pleanála

## Inspector's Report

### ABP-305760-19

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<b>Development</b>	Retention of agricultural buildings and an extension to an agricultural building and permission for alterations to existing agricultural buildings
<b>Location</b>	Willsborough, Borrisokane, Co. Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	19/600911
<b>Applicant</b>	Marjorie Ryan
<b>Type of Application</b>	Retention permission and permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party v Grant
<b>Appellant</b>	Margaret Richardson
<b>Date of Site Inspection</b>	06.01.2020
<b>Inspector</b>	Anthony Kelly

## **1.0 Site Location and Description**

- 1.1. The subject site, which comprises a farmyard, is located on a local road approx. 4.8km south west of Borrisokane in northern Co. Tipperary.
- 1.2. The area is agricultural in nature, primarily comprising fields. There is some one-off housing in the wider area including 2 no. single-storey houses on the opposite side of the local road from the farmyard. The farmyard is adjacent to the applicant's house.
- 1.3. There is a dedicated farmyard access from the public road, separate to the domestic access, located approx. 40 metres north east of the applicant's house. The farmyard comprises a significant number of separate buildings and uses and is compact in layout. The farmyard buildings are typical of such structures, constructed with block and metal sheeting etc. with concrete hardstanding and circulation areas.
- 1.4. The site has a stated area of 1.471 hectares.

## **2.0 Proposed Development**

- 2.1. The application is for the retention of 3 no. meal stores, 1 no. machinery shed, 6 no. livestock slatted sheds, 1 no. loose cow shed, 1 no. loose calf shed, 1 no. extended sheep shed and 1 no. open loose cattle shed. Permission is also sought for alterations to existing sheds consisting of replacing the roof structures and raising roof heights of an existing sheep shed, 2 no. loose cattle sheds and a livestock slatted shed.
- 2.2. The floor area of the works to be retained is stated as 1,749sqm. The floor area of the works subject to permission is stated as 412.8sqm.
- 2.3. In addition to standard planning application plans and particulars the planning application was accompanied by a Nutrient Management Plan.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The planning authority decided to grant permission subject to 8 no. conditions of a standard nature, including conditions relating to the prevention of environmental pollution, the protection of waters including groundwater, to minimise the volume of waste generated and public health.

### **3.2. Planning Authority Reports**

- 3.2.1. The Planning Officer's report was the basis for the decision. The Planning Officer concluded that the development complies with the policies and objectives of the North Tipperary County Development Plan, 2010, as varied, and the development does not have an adverse impact upon the character of the area or the amenities of adjoining properties.

#### **3.2.2. Other Technical Reports**

**Environment Section** – No objection.

### **3.3. Prescribed Bodies**

None received.

### **3.4. Third Party Observations**

A third-party submission, which includes photographs, was received from Margaret Richardson. The main issues raised can be summarised as follows:

- The submission is a strong objection to the machinery shed, feed stores and grain store. A complaint was previously lodged in February 2019 in relation to the machinery shed as it was used to store animal feed.
- These 3 no. structures are not the required 100 metres from a house and written permission from the relevant householder was not obtained to enable construction of these sheds inside the 100 metres distance. It is understood that farm buildings must

be at least 10 metres from a public road and the machinery shed is constructed on the boundary with the public road.

- The yard area around the 3 no. sheds is used to mix feed. Transportation of the feed turns the public road into a muck track with large holes and feed which is spilled is never cleaned up.
- The sheds draw hundreds of birds to feed on the animal feed. This gives rise to extreme bird fouling to the house and garden of the house across the road and requires constant cleaning.
- Horrendous odour from the site.
- There does not appear to be any form of treatment of mucky water from the yards before it soaks through the ground in such close proximity to the river to the north east.
- The operation of the farmyard has an impact on the neighbouring community and environment. Further expansion would seriously injure residential amenity and depreciate even further the value of adjacent properties.

## **4.0 Planning History**

4.1. None relevant.

4.2. Warning letter TUD-19-016 relates to agricultural buildings and extensions.

## **5.0 Policy Context**

### **5.1. North Tipperary County Development Plan 2010**

- 5.1.1. Section 5.6.1 (Agriculture and Equine Industries) of the Plan is relevant to the current application.
- 5.1.2. Policy TI11 (Management of Agricultural Slurries) states that it is the policy of the Council to ensure that proposals for agricultural developments, as appropriate,

comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 or any amendment thereof.

## **5.2. Natural Heritage Designations**

- 5.2.1. The closest Natura 2000 site is Lough Derg, North-East Shore SAC, approx. 4.9km to the west. The closest area of natural heritage designation is Willsborough Esker pNHA approx. 0.6km to the south west.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. 1 no. third-party appeal was received from Margaret Richardson, Ardcroney, Nenagh whose family's property is located on the opposite side of the public road from the farmyard. The main issues raised can be summarised as follows:
- Specifically objecting to the decision of the planning authority to grant permission for retention for the machinery shed, feed stores and grain store.
  - Planning rules state all agricultural buildings must be at least 10 metres from a public road and 100 metres from a house unless written permission is obtained. The 3 no. buildings do not comply with these rules. The appellant considers that planning authority ignored its own rules in granting permission.
  - The machinery shed was used to store loose animal feed until recently and the appellant is fearful that the shed will revert back to its previous use as a feed store if retention permission is granted.
  - The 3 no. buildings and area are the cause of an extreme bird fouling problem to the appellant's family's property e.g. the house, pathways and gates during the animal feeding season when the mixing, storage and spillage of feed occurs in the area of the 3 no. sheds. Cleaning on a daily basis is required as a result.

- Animal feed is mixed in the yard area and transported through the gate opposite the appellant's family's property and feed spillages on the public road have never been cleaned up.
- The road surface is churned up from this constant activity causing potholes.
- Horrendous smell all year round and has been getting worse as more cattle sheds have been added. Concern that the value of the appellant's family's property is depreciating.
- A number of photographs have been submitted supporting the appeal.

## 6.2. Applicant's Response

6.2.1. The main points made can be summarised as follows:

- The machinery shed and feed store are unauthorised structures as they do not meet some of the conditions and limitations required for exempt development. These are part of the planning application.
- The machinery shed was constructed in 2018 with an open frontage and for agricultural machinery use. It is used for the storage of machinery and will always be used for this use.
- The feed store was constructed in 1999 for the storage of feed. It is designed to prevent access of vermin or birds and the doors are closed when not in use.
- The grain store was constructed in 2003 and has been used for the storage of grain since. It is not included in the planning application. The doors are closed when not in use.
- The applicant tries to maintain the farmyard to a very high standard.
- If Tipperary wish to upgrade the surface of the public road in the area of the farm entrance the applicant has no problem contributing to the costs incurred.
- A number of photographs have been submitted with the response.

### 6.3. **Planning Authority Response**

6.3.1. None received.

## 7.0 **Assessment**

The main issues are those raised in the grounds of appeal and in the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Retention of Structures
- Proposed Development
- Exempted Development Regulations
- Farm Activity
- Appropriate Assessment
- Other Matters

### 7.1. **Retention of Structures**

7.1.1. It is proposed to retain 14 no. structures. These are located throughout the farmyard and comprise 3 no. meal stores, 1 no. machinery shed, 6 no. livestock slatted sheds, 1 no. loose cow shed, 1 no. loose calf shed, 1 no. extended sheep shed, and 1 no. open loose cattle shed.

7.1.2. None of the structures to be retained are located outside of the general farmyard complex footprint. They serve a number of different purposes, all of which are ancillary to the normal operation of a farmyard. In terms of design and external finishes, all structures are reflective of traditional agricultural structures. In terms of the sizes of structures to be retained they vary in floor area between 31.7sqm (the calf shed identified as Farm Structure No. 16d) and 359.6sqm (the slatted shed identified as Farm Structure No. 9) and they vary in heights between 4.354 metres

(the machinery shed identified as Farm Structure No. 1) and 6.488 metres (the loose cow shed and calf shed identified as Farm Structure Nos. 16c and 16d).

- 7.1.3. As the structures subject of the retention application are ancillary to the normal operation of a farmyard and visually form part of and are constructed within an established farmyard, it is considered that their retention is acceptable in principle and would likely have been granted had permission been applied for in the first instance.

## **7.2. Proposed Development**

- 7.2.1. It is proposed to alter the height of 4 no. sheds; 2 no. loose sheds, a slatted shed and a sheep shed. These sheds, in addition to other structures not subject of this element of the planning application, form part of a larger group of buildings in the south western area of the farmyard. The highest buildings subject of the planning application, Farm Structure Nos. 16c and 16d, also form part of this group of buildings.
- 7.2.2. The 2 no. loose sheds and the slatted shed are located on the eastern elevation of the group of buildings and they range in height from 3.039 metres to approx. 5.8 metres. It is proposed to replace the existing roof structures and increase the roof heights. These structures currently have a mix of roof types; mono-pitch and semi-circular. It is proposed to provide 2 no. separate mono-pitch structures in lieu. Both end walls are to be increased by approx. 1 metre. However, at the highest point the mono-pitch roof will be slightly lower, 5.455 metres high, than the existing maximum ridge height. On the west elevation the existing mono-pitch roof of the sheep shed, located centrally within the cluster of agricultural structures of which it forms part, is to be uniformly raised by approx. 800mm in order to fit seamlessly into the larger mono-pitch of the extended sheep shed to be retained.
- 7.2.3. Overall it is considered that there will be negligible impact on the appearance of the farmyard as a result of the proposed development and it is acceptable.

## **7.3. Exempted Development Regulations**

- 7.3.1. The appellant queries how the planning authority ignored several 'rules' in order to grant permission for the structures specifically subject of the appeal documentation.

- 7.3.2. The appellant appears to be referring to Schedule 2 Part 3 (Exempted Development – Rural) (Agricultural Structures) of the Planning & Development Regulations, 2001 (as amended) which set out a number of Conditions and Limitations which must be complied with in order for certain structures to be exempt from the requirement to obtain planning permission, including a requirement that they be situated more than 10 metres from a public road and more than 100 metres from a third-party house unless the written consent of the owner has been obtained. There are other Conditions and Limitations applicable including the cumulative floor space of such structures within the same farmyard. In relation to the specific appeal, Class 9 of Schedule 2 Part 3 is specifically relevant.
- 7.3.3. The Conditions and Limitations apply only where exempted development is proposed. That is not the case in the current application because the machinery store and feed store are part of the planning application. The legislation referenced in the appeal is not relevant when a planning application is made.
- 7.3.4. Therefore, the planning authority did not ignore any relevant legislation and were entitled to grant permission. I note that Section 5 (Other Observations/Submissions) of the Planning Officer's report did make this point.

#### **7.4. Farm Activity**

- 7.4.1. The grounds of appeal reference ongoing nuisance from the farming activity on-site with bird fouling, preparation of animal feed, spillages, deterioration in the condition of the public road and odour.
- 7.4.2. This is a rural area and the farmyard on site is an established land use. It is inevitable that there will be an impact on the receiving environment and surrounding area from normal activities that take place within farmyards. The nuisances set out in the appeal documentation are noted. However, these nuisances are considered to be a result of standard farmyard activity and are to be expected in proximity to a substantial working farmyard in a rural area. It is not the role of the planning process to get involved in the specific detailed operation of a farmyard. The structures subject of the application, and those specifically referenced in the grounds of appeal, are part of a larger, compact farmyard and their location is considered to be appropriate in terms of the consolidation of activity.

7.4.3. I consider that the provision of the machinery store and feed store at this location is appropriate and are acceptable from a planning perspective.

## 7.5. **Appropriate Assessment**

7.5.1. A Nutrient Management Plan has been submitted with the planning application. This indicates that the Plan encompasses an area of 248.44 hectares; 199.6 hectares of grassland and 48.84 hectares of arable land. This area is greater in size than the area outlined in blue on the 'Land Ownership Map' submitted with the planning application. Additional land spreading maps outlining additional land under third-party ownership are included in the Nutrient Management Plan as well as letters of consent from relevant landowners permitting grazing and application of organic farm fertiliser and are largely located within the wider area of northern Co. Tipperary.

7.5.2. The Nutrient Management Plan states that the 606 no. cattle will produce 2,471.8m<sup>3</sup> in the 16-week storage period. Seepage comprises 121.4m<sup>3</sup> and dairy washings comprises 86.4m<sup>3</sup>. It is stated that the 13 no. slatted units within the farmyard have a capacity of 2,688m<sup>3</sup>.

7.5.3. The only watercourse within or around the boundaries of the landholding outlined in blue on the submitted 'Land Ownership Map' runs through the holding and is approx. 130 metres north of the subject farmyard at its closest point. It appears that this watercourse runs in a westerly direction where it joins another watercourse and flows in a north easterly direction towards Borrisokane. Just south west of Borrisokane it discharges into the Ballyfinboy River before flowing a north westly direction and flows into Lough Derg. Lough Derg at this location is both an SAC (Lough Derg, North-east Shore) and an SPA (Lough Derg (Shannon)). In a straight line this is a distance of approx. 10.4km. The hydrological distance is greater at approx. 15.7km to the Natura 2000 site.

7.5.4. Standard conditions applied to agricultural planning applications relate to the avoidance of pollution, preservation of public health, ensuring that the capacity of effluent and storage tanks is reserved for their specific purposes, ensuring the satisfactory disposal of waste material, to prevent pollution of watercourses and protection of the environment. It is a standard condition of granted agricultural planning applications that slurry generated by the development shall be disposed of

by spreading on land. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied are required to be consistent with the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended. This legislation is in place to protect waters from agricultural practices.

7.5.5. Having regard to the nature and scale of the development, the information submitted with the planning application, the nature of the receiving environment and the hydrological distance to the most relevant Natura 2000 site, it is considered that no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 7.6. **Other Matters**

- The appellant makes specific reference in the grounds of appeal to the machinery shed, feed stores and grain store (Farm Structure Nos. 1, 2 and 3 on the Site Layout Map (Drawing No. 6.1) submitted with the planning application). It should be noted that the grain store, Farm Structure No. 3, is not part of the planning application and is not subject of this assessment. This report and decision relates to the development specifically subject of the planning application.
- In relation to the appellant's concern that the machinery shed may be used as an animal feed store if permitted, a condition can be attached to any grant of permission that may issue restricting the use of this structure to machinery storage. On site inspection this structure was being used for the storage of machinery.

## 8.0 **Recommendation**

8.1. I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

Having regard to the provisions of the North Tipperary County Development Plan 2010 and the nature and scale of the development within an established farmyard it is considered that, subject to compliance with the conditions set out below, the development would be acceptable in terms of the rural environment of the site and would not seriously injure the residential amenities of properties in the vicinity. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained, and carried out and completed, in accordance with the plans and particulars lodged with the application 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 and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The machinery shed, Farm Structure No. 1 as per the Site Layout Map (Drawing No. 6.1), shall be used for the purpose of the storage of machinery only.

**Reason:** In the interest of clarity and to protect the residential amenity of adjoining property.

3. The sheds to be altered shall be externally finished in construction materials and colours matching the existing farmyard.

**Reason:** In the interest of visual amenity.

4. The slatted sheds shall be used only in strict accordance with a management schedule which shall be submitted to and agreed in writing with the planning authority within 8 weeks of the date of grant of this planning application. The management schedule shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended, and shall provide at least for the following:

(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.

5. All foul effluent and slurry generated by the development shall be conveyed through properly constructed channels to the storage facilities and no effluent or slurry shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

**Reason:** In the interest of 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. Slurry generated by the 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 Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended.

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

8. A minimum of 16 weeks storage shall be provided in the underground storage tanks. Detail showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority within 8 weeks of the date of grant of this application.

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

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Anthony Kelly  
Planning Inspector

31.01.2020