



An
Bord
Pleanála

Inspector's Report

ABP-306106-19

Development	Retention of constructed slatted cattle shed, site entrance and associated site works
Location	Meelick, Whitegate, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	19743
Applicant(s)	Tony O'Brien
Type of Application	Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Karina Brown
Observer(s)	None
Date of Site Inspection	19/02/2020
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located in the rural area of Meelick, in north-east Clare. The site in a rural area north of Lough Derg is mostly agricultural land and associated buildings.
- 1.1.2. On the subject site is a single storey slatted shed, which was in use on the date of my site visit. The site visit followed a day of extremely heavy rainfall. The site was inaccessible on foot. To the north of the site is a two storey farmhouse with outbuildings.

2.0 Proposed Development

- 2.1. On the 25th September 2019 permission was sought for the retention of a slatted cattle shed (169sq.m.), site entrance and associated works on a site of 0.23ha. Details provided with the application form state that of the landowners 3.34ha, 2.679ha are available for spreading.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 12th of November 2019, the Planning Authority issued a notification of their intention to GRANT permission subject to 7 no. conditions. Condition no.s 3 to 7 refer to the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2014.

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** The use of the constructed shed for agriculture purposes is acceptable within the context of its location in the countryside. Normal odour and noise will not have an adverse effect on residential amenity. Third-party concerns re water quality and management of effluent will be addressed by conditions 3, 4 and 5, of the Good Agriculture Practice regulations, 2014. Recommendation to grant permission.

4.0 Planning History

- 4.1.1. Enf. UD18/78: Warning letter served regarding the construction of an agriculture shed,

- 4.1.2. Section 5 18/52: Declaration that the construction of an agricultural shed was development and was not exempted development.

5.0 Policy Context

5.1. Clare Development Plan 2017 – 2023, as varied

- 5.1.1. Subject site is located in an unzoned rural area, designated as being in the Lough Derg basin landscape character area.
- 5.1.2. **CDP8.32: Agricultural Waste:** It is an objective of the Development Plan. To ensure that the disposal of agricultural waste is carried out in a safe, efficient and sustainable manner having regard to the environment and health and safety of individuals, and in compliance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2009 (as amended), S.I. No.101 of 2009, the Litter Pollution Act 1997 and the European Communities (Water Policy) Regulations 2014 (SI No. 350 of 2014).
- 5.1.3. **A1.11, Agricultural Developments** The rural countryside is a natural resource with agricultural activity being particularly important. In considering proposals for agricultural development (walls, fences, yards, stables, sheds, slurry pits etc.) the Planning Authority will have regard to the Department of Agriculture document Guidelines and Recommendations on the Control of Pollution from Farmyard Wastes together with the following:
- Siting and design that is keeping with the surrounding area
 - The use of muted coloured materials
 - Grouping of buildings will be encouraged
 - Adequate effluent storage facilities
- The Planning Authority will require adequate provision for the collection, storage and disposal of effluent produced from agricultural developments. The European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2014 set out the requirements for storage of farm effluents and the minimum holding periods for storage of farm wastes. In Clare the holding period required for the purposes of calculating waste storage facilities is 18 weeks. It is permitted to spread soiled water all year round, thus the minimum holding period is 10 days. For silage the short term storage period is 3 days. All agricultural developments must be designed and constructed in accordance with the Minimum Specifications as set out by the Department of Agriculture, Food and the Marine.

5.2. **Natural Heritage Designations**

5.2.1. The subject site is located 2km south of the Slieve Aughty Mountains SPA (004168) and 0.6km north of the Lough Derg (Shannon SPA).

5.3. **EIA Screening**

5.3.1. Having regard to nature of the development comprising the retention of an agricultural building in a rural area, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. An agent on behalf of a third-party has appealed the decision of the Planning Authority to grant permission. The submission states that the applicant built the shed in 2018 without planning permission. The grounds of the appeal can be summarised as follows:

6.1.2. **Non-compliant Development**

- The slurry tank is a safety risk and does not meet the minimum standards for bovine livestock units as set out by the Dept. of Agriculture, Food and the Marine.
- There are inadequate arrangements for surface water drainage. There is uncontrolled discharge of water from the roof.
- It is suggested that the roof water soakpit as shown on the layout plan does not exist. There is no pipe connection from the roof to a soakpit. Photos submitted.
- There is no drainage for hard standing areas and the driveway. Polluted water enters the appellants property. Photos submitted.
- Section 4.2 of the Dept of Agriculture guidance on slatted sheds requires that tanks be extended outside of the building to allow for agitation. The applicants plans show the agitation point inside the building. The slurry tank does not appear to extend outside the building.

- Safety notices have not been erected.
- The Planning Authority's condition no. 2 is not achievable as the building has not been constructed in accordance with the guidelines.
- Condition no. 5 of the Planning Authority's decision has no meaning as plans for site management of surface water have not been requested.
- The Planning Authority's decision is flawed. The structure to be retained is not in compliance with the Minimum specification for Bovine Livestock Units and Reinforced Tanks or Article 7(2) of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017.

AA Screening

- The AA screening exercise undertaken by the Planning Authority is not correct.
- The site is 600m from the Lough Derg SPA, not the 5.6km stated by the Planning Authority. One of the fields designated for slurry spreading is 200m from the SPA.
- There is a gradual and continuous fall from the site to the bay, including the site for spreading. There is a risk, during extended periods of rainfall, that the road acts as a watercourse directly connecting to the SPA.
- There is a potential risk to the SPA from accidental spillage of slurry during transport or of run-off from the fields.
- It is not reasonable to rely on good farm management practices to safeguard a European site which is at risk from the subject development.
- The Board is requested to refuse permission on the grounds that the subject development does not comply with the Minimum Specification for Bovine Livestock Units and Reinforced Tanks (2017) or the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 and that in the absence of an NIS the Board cannot be satisfied that the subject development would not have a significant effect on the Lough Derg (Shannon) SPA, site no. 004058.

6.2. Applicant Response

6.2.1. None on file.

6.3. Planning Authority Response

6.3.1. The Planning Authority responded to the third-party appeal as follows:

- Site notice was in accordance with regulations.
- The Applicant is obliged under condition no. 5 to carry out whatever works are necessary to ensure compliance - clean surface water from the roof is properly disposed of to soakpits and is not permitted to flow into the effluent storage area, the public road or the neighbouring property.
- The construction of the slurry pit is a matter for the Dept. of Agriculture inspectors or Teagasc, not the planning department.
- The conservation objectives for the Lough Derg relate to the protection of bird species. The qualifying interests for the site are all bird species.
- Condition no.s 3,4 and 5 of the Planning Authority decision rely on good farm management to safeguard the European site.
- There will be no increase in effluent arising from the overall farm.
- The spreading of farm yard effluent is regulated by the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014.

7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Surface Water Management
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. Permission is sought for the retention of an agricultural slatted shed for the overwintering of existing livestock on an existing farm. The principle of the proposed development is acceptable.

7.3. Surface Water Management

- 7.3.1. The appellant submits that the subject shed has not been constructed in accordance with the standards of the Minimum Specification for Bovine Livestock Units and Reinforced Tanks (2017). The assessment of same is not a matter for the Planning Authority or the Board. It must be addressed by the relevant Dept and / or agricultural licensing body. Should the Board decide to grant permission to retain conditions requiring compliance with the relevant sections.
- 7.3.2. The right of the applicant to spread slurry on his lands is likewise not a matter for the Board.

7.4. Appropriate Assessment

- 7.4.1. The subject site is located 600m from the Lough Derg (Shannon) SPA (004058). The NPWS notes that Lough Derg lies within counties Tipperary, Galway and Clare and is the largest of the River Shannon Lakes, being some 40 km long. The greater part of the lake lies on Carboniferous limestone but the narrow southern section is underlain by Silurian strata. Most of the lower part of the lake is enclosed by hills on both sides, the Slieve Aughty Mountains to the west and the Arra Mountains to the east. The northern end is bordered by relatively flat, agricultural country. The lake shows the high hardness levels and alkaline pH to be expected from its mainly limestone catchment basin, and it has most recently been classified as a mesotrophic system.

The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the following species: Cormorant, Tufted Duck, Goldeneye and Common Tern. The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds.

- 7.4.2. Lough Derg is of importance for both breeding and wintering birds. Management of one of the islands used for nesting has increased the area of suitable habitat

available and prevented nests being destroyed by fluctuating water levels. In winter, the lake is important for a range of waterfowl species. Hen Harrier are also known to roost in the reedbeds on the margins of the site during the winter. Lough Derg (Shannon) SPA is of high ornithological importance as it supports nationally important breeding populations of Cormorant and Common Tern. In winter, it has nationally important populations of Tufted Duck and Goldeneye, as well as a range of other species including Whooper Swan. The presence of Whooper Swan, Greenland White-fronted Goose, Hen Harrier and Common Tern is of particular note as these are listed on Annex I of the E.U. Birds Directive. Parts of Lough Derg (Shannon) SPA are a Wildfowl Sanctuary.

7.4.3. As noted in the NPWS extract above, the qualifying interests for the SPA are:

- A017 Cormorant *Phalacrocorax carbo*,
- A061 Tufted Duck *Aythya fuligula*
- A067 Goldeneye *Bucephala clangula*
- A193 Common Tern *Sterna hirundo*

7.4.4. The site has the generic conservation objective: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. To acknowledge the importance of Ireland's wetlands to wintering waterbirds, "Wetland and Waterbirds" may be included as a Special Conservation Interest for some SPAs that have been designated for wintering waterbirds and that contain a wetland site of significant importance to one or more of the species of Special Conservation Interest. Thus, a second objective is included as follows: Objective: To maintain or restore the favourable conservation condition of the wetland habitat at Lough Derg (Shannon) SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

7.4.5. On the date of my site visit a large amount of water had pooled at the entrance to the subject site and extending into the neighbouring site to the north. A risk to the SPA would arise should surface-water run-off from the slatted shed or water contaminated with bovine effluent enter the ground water or through flood waters and reach the SPA. I note the second conservation objective to maintain or restore the favourable conservation condition of the SPA as a resource for the regularly occurring migratory waterbirds that use it. The identified risk of contaminated water reaching the water

body has not been assessed, nor any measures under which such a risk could be avoided. Given the need for a precautionary approach, it is considered that in the absence of an NIS, such a risk cannot be reasonably excluded. Further, given that the proposed development is for retention and noting the provisions of section 177U of the Planning and Development Act 2000, as amended, it of considered that the Board is precluded from granting permission in this case.

8.0 Recommendation

8.1.1. I recommend permission be REFUSED for the following reason:

1. The proposed retention of the existing slatted shed was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. On the basis of the information provided with the application for retention and in the absence of a Natura Impact Statement the Board cannot be satisfied 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. 004058 , or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

Gillian Kane

Senior Planning Inspector

18 March 2020