



An
Bord
Pleanála

Inspector's Report ABP-306522-20

Development	A well together with pump-house and connection to all services and associated site works.
Location	Church Lane, Tiglin, Newcastle, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	191202
Applicant(s)	Martin O'Toole
Type of Application	Permission for Retention
Planning Authority Decision	Refusal
Type of Appeal	First Party v. Decision
Appellant(s)	Martin O'Toole
Observer(s)	Brian & Maureen MacDiarmada
Date of Site Inspection	5 th May, 2020
Inspector	Robert Speer

1.0 Introduction

- 1.1. Please be advised that this application should be considered in conjunction with the concurrent Section 5 referral lodged under ABP Ref. No. ABP-306369-20 on the basis that both files concern works within the same site / development.

2.0 Site Location and Description

- 2.1. The proposed development site is located in the rural townland of Newcastle Upper, Co. Wicklow, approximately 1.2km southwest of the village of Newcastle, where it occupies a position along a minor local roadway known as Church Lane which extends southwards from Newcastle Church of Ireland to its junction with the R761 Regional Road. It comprises a large agricultural field of 3.84 hectares which has been subdivided into a series of paddocks for the holding of livestock (sheep, goats, and horses etc.) and also includes a number of outbuildings / agricultural structures.
- 2.2. The principle concentration of structures / activity is focused within the south-western corner of the site on an elevated plateau bounded by woodland to the west which rises above the adjacent roadway to offer expansive views eastwards over the intervening lands towards the sea. Within this area, there are a variety of outbuildings, including the pumphouse proposed for retention, an animal pen, and 2 No. unfinished 'farm buildings' which have only been completed as far as the foundations and base floor level. This area is also used for the storage of assorted farming / agricultural equipment, including 2 No. vintage tractors, a small dumper, a woodchipper, a horsebox, and a number of trailers / transporters, as well as silage bales and water tanks.
- 2.3. Access to the wider site may be obtained via a series of 4 No. separate entrances from the roadway that bounds the lands to the east, however, the principle access to the south-eastern corner of the site is located opposite the entrance to a nearby equestrian / equine enterprise. The roadway serving the site is narrow and typical of less heavily trafficked rural roads / laneways, although it would appear to have been upgraded in part for a distance along the approach to the site from the north through the application of loose chippings as surface dressing.

3.0 Proposed Development

- 3.1. The proposed development consists of the retention of an agricultural well together with an associated pumphouse and connection to all services and associated site works. The pumphouse itself has a stated floor area of 4m² and comprises a single storey building of a blockwork construction which has been in faced in stone cladding with an apex pitched natural slate roof (the overall height of the structure measures c. 4.2m as scaled from the submitted drawings). The high standard of the external finishes includes scalloped barge boards and the feature use of granite quoins and brickwork detailing. It is located c. 139m from the roadway and is centrally positioned within a substantial area of permeable hardstanding measuring 13m x 13m (i.e. 169m²).
- 3.2. Access is obtained via an existing entrance arrangement from the adjacent roadway to the immediate east, however, the construction of the new access road shown on the site layout plan and the planted screening mound do not form part of the subject application.
- 3.3. The Board is advised to consider this appeal in conjunction with the determination of the Section 5 referral made under ABP Ref. No. ABP-306369-20 on the same lands.

4.0 Planning Authority Decision

4.1. Decision

- 4.1.1. On 2nd January, 2020 the Planning Authority issued a notification of a decision to refuse permission for the retention of the proposed development for the following 2 No. reasons:
- The proposed development would represent the consolidation of unauthorised development having regard to the existing development on site for which no permission exists. The provision of such a form of development unduly impacts on the amenities of the area, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area.
 - Having regard to:

- a) Objective ARG5 of the County Development Plan, which permits the development of new, appropriately located and designed agricultural buildings, which are necessary for the efficient and environmentally sound use of the agricultural practice and which do not create a visual intrusion in the landscape;
- b) The siting of the proposed structure in an elevated and unscreened position within the landholding;

It is considered that the proposed development would form an inappropriate and intrusive feature on the landscape which would be contrary to the visual amenities of this area and would set an undesirable precedent for similar inappropriate development in the area. The proposed development would therefore be contrary to proper planning and sustainable development.

4.2. Planning Authority Reports

4.2.1. Planning Reports:

Details the site context, planning history, and the applicable policy considerations before stating that the proposed well and pumphouse would be acceptable in principle subject to compliance with Objective AGR5 of the Development Plan which promotes '*the development of new, appropriately located and designed agricultural buildings which are necessary for the efficient and environmentally sound use of the agricultural practice*'. However, it is considered that the siting of the proposed construction in an elevated and exposed position within the landholding in the absence of a clear justification for same would be contrary to Objective ARG5 in that it would give rise to an unacceptable level of visual intrusion. Further concerns arise as regards the proximity of a number of partially constructed buildings that have been deemed to constitute unauthorised development and the potential precedent which could be set for further visually intrusive development. The report thus concludes by recommending a refusal of permission for the reasons stated.

4.2.2. Other Technical Reports:

Environmental Health Officer: No objection.

Roads: States that the proposed development will not impact on the road network.

4.3. **Prescribed Bodies:**

None.

4.4. **Third Party Observations:**

- 4.4.1. A single submission was received from an interested third party, however, in the interests of conciseness, and in order to avoid unnecessary repetition, I would advise the Board that the principle grounds of objection / areas of concern raised therein are reiterated in the observation received with respect to this appeal.

5.0 **Planning History**

5.1. *On Site (Planning Applications):*

- 5.1.1. PA Ref. No. 09/675. Was refused on 17th November, 2009 refusing Martin Craven permission for a rural dwelling house, garage with solar panels, wastewater treatment installation to EPA standards and all associated site works.
- 5.1.2. PA Ref. No. 18/298. Was refused on 3rd May, 2018 refusing Martin O'Toole permission for the retention of a well together with pumphouse and connection to all services and associated site works.
- Having regard to the site size, the scale of the agricultural operation on site and the lack of justification for the need of the proposed well and pump house, it is considered that the proposed development is not justified and to permit the proposed development in the absence of such justification, would set a precedent for the provision of multiple wells supplying small land holdings which would have an unacceptable combined environmental impact. The proposed development would therefore be contrary to proper planning and sustainable development.
 - Having regard to the unauthorised development on site, namely the caravan and partly built structures it is considered that the proposed well could consolidate such unauthorised development. Therefore, to permit the proposed development would be contrary to proper planning and sustainable development.
- 5.1.3. PA Ref. No. 18/1286. Was refused on 15th January, 2019 refusing Martin O'Toole permission for a farmyard complex comprising of 2 mixed use stables, a pumphouse

containing well, agricultural waste storage tank, a dungstead, 2 temporary sheeted outbuildings and all associated site works.

- Having regard to
 - a) the size and scale of the agricultural buildings / farmyard complex,
 - b) The limited size of the applicant's landholding,
 - c) The location of the development on an exposed site visible in views from a wide area.
 - d) The position, siting and design of the proposed buildings, which do not represent agricultural structures,
 - e) The non-clustered or unified design of the proposed buildings within the farmyard complex,
 - f) The lack of evidence to show that agricultural practices are being carried out on site that would necessitate a farmyard complex of this size.

It is considered that to permit the proposed development in the absence of such justification, the proposed farmyard complex would not represent a necessary farmyard complex, would impinge on the visual amenities of this area, would be contrary to the provisions of the County Development Plan in relation to agricultural development, proper planning and sustainable development.

- The proposed development would endanger public safety by reason of traffic hazard because the road (Church Lane) leading to the site is considered to be deficient in terms of its width, alignment and surfacing in order to cater for the traffic that would be generated by the proposed development. It has also not been demonstrated to the satisfaction of the Planning Authority that adequate sight distances can be achieved at the junction of the site entrance with the public road or that surface waters generated on site will not enter onto the public road network or onto adjoining properties. The proposal would therefore endanger public safety by reason of traffic hazard and would impact upon the amenity of adjoining properties.
- The proposed development would represent the consolidation of unauthorised development having regard to the number of existing entrances

serving the subject site for which no record of permission exists and which have not been detailed on the Site Layout Plan submitted.

The provision of such a form of development unduly impacts on the amenities of the area, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area

- Having regard to the lack of detail submitted with regard to the disposal of waste from the proposed agricultural buildings, it has not been demonstrated that the proposed development will not give rise to adverse impacts contrary to Objective AGR4 of the County Development Plan which requires that the disposal and storage of agricultural waste shall comply with the standards required by the Council, therefore to permit this development in the absence of such information would be contrary to Development Plan Policy and to proper planning and sustainable development.
- The proposed development would be contrary to the proper planning and sustainable development of the area and would contravene Objectives NH2 because insufficient information has been submitted, about the nature of the proposed development, for the Planning Authority to screen out the requirement for Appropriate Assessment in accordance with Article 6(3) of the Habitats Directive and to permit this development in the absence of such information would be contrary to Wicklow County Council policies/objectives as set out in the County Development Plan 2016 – 2022 and contrary to the proper planning and sustainable development.

5.2. *On Site (Section 5 Declarations / Referrals):*

- 5.2.1. PA Ref. No. EX85/19 / ABP Ref. No. ABP-306369-20. On 11th November, 2019 an application was lodged with the Planning Authority pursuant to Section 5 of the Planning and Development Act, 2000, as amended, in order to determine whether the construction of stables for the purposes of sheltering horses, fodder, sheep and goats was or was not development and was or was not exempted development. Subsequently, in correspondence dated 27th November, 2019, the Planning Authority indicated that it would not be issuing a declaration on the application as the subject matter was not significantly different to those earlier Section 5 declarations made on

site. Accordingly, the matter has been referred to the Board for a determination and a decision on same is presently pending.

5.2.2. PA Ref. No. EX46/19. Was determined on 16th July, 2019 wherein it was held that the development of a farmyard comprising – Building 1: stables, sheep housing and fodder storage; Building 2: Goat housing and dungstead; hardstanding area; and an effluent storage tank, at Church Lane, Newcastle Upper, Newcastle, Co. Wicklow, was development and was not exempted development.

5.2.3. PA Ref. No. EX17/18. Determined that the construction of 3 No. agricultural structures at Church Lane, Newcastle, Co. Wicklow, was development and was not exempted development.

5.2.4. PA Ref. No. EX43/16. Was determined on 20th July, 2016 wherein it was held that the construction 2 No. agricultural buildings at Church Lane, Tiglin, Newcastle, Co. Wicklow, was development and was not exempted development.

5.2.5. PA Ref. No. EX34/16. Was determined on 28th June, 2016 wherein it was held that the construction of 2 No. two agricultural buildings at Church Lane, Newcastle, Co. Wicklow, was development and was not exempted development.

5.3. *On Sites in the Immediate Vicinity:*

5.3.1. PA Ref. No. EX41/18 / ABP Ref. No. ABP-302612-18. Was determined on 23rd January, 2019 wherein it was held that the erection of an agricultural shed at Newcastle Farm, Newcastle, Co. Wicklow, was development and was not exempted development.

5.3.2. PA Ref. No. 15198. Was refused on 15th May, 2015 refusing Bergin Equine permission for (1) retention of existing equestrian/livery facility comprising of conversion/change of use of agricultural building into stables/tack room (152.03sqm), use of outdoor riding arena for commercial purposes, flood lighting, 2 no. storage buildings, mobile home (for administration purposes): total: 69.92sqm, access road/car parking area, vehicular entrance, ancillary site development works. (2) permission for proposed portable chemical toilet, all at Brambly Hedge Farm, Church Lane, Tiglin, Newcastle, Co. Wicklow.

- The proposed development would endanger public safety by reason of serious traffic hazard because:

- a) The laneway is located on a seriously substandard and unsurfaced minor laneway, which is inadequate in width, alignment and structural condition and which is served by substandard road junctions and therefore cannot cater for the increase in traffic that would be generated by this development.
 - b) Inadequate sightlines exist at the site entrance.
- The proposed development would not be prejudicial to public health because the submitted proposal for the provision of a portable chemical toilet to serve the proposed development is not an acceptable solution for the management of wastewater on site.
 - The retention of a mobile home where no proven need for such form of development has been established would, by reason of its design and materials of construction, be out of character with the pattern of development in this rural area, would establish an undesirable precedent for similar sub-standard forms of development in the area, and would be contrary to the visual amenities of the area and to proper planning and sustainable development of the area.

6.0 Policy and Context

6.1. Wicklow County Development Plan, 2016 – 2022:

Chapter 5: Economic Development:

Section 5.6: Objectives for Wicklow's Rural Economy: Agriculture:

Strategic Objective: To encourage the continued operation of farming and its associated uses where it already exists, and to facilitate the diversification of the agricultural economy through the support of appropriate alternative farm enterprise sources.

AGR1: To facilitate the development of environmentally sustainable agricultural activities, whereby watercourses, wildlife habitats, areas of ecological importance and other environmental assets are protected from the threat of pollution, and where development does not impinge

on the visual amenity of the countryside. Developments shall not be detrimental to archaeological and heritage features of importance.

AGR2: To encourage and facilitate agricultural diversification into suitable agri-businesses. Subject to all other objectives being complied with, the Council will support the alternative use of agricultural land for the following alternative farm enterprises:

- Specialist farming practices, e.g. organic farming, horticulture, specialised animal breeding, deer and goat farming, poultry, flower growing, forestry, equine facilities, allotments, bio-energy production of crops and forestry, organic and speciality foods; and
- suitable rural enterprises.

AGR3: To protect agricultural or agri-business uses from incompatible uses, which are more suited to being located within an urban settlement.

AGR4: To ensure that agricultural developments do not cause increased pollution to watercourses. Developments will be required to adhere to the Nitrates Directive (91/676/EC), and the EC (Good Agricultural Practice for Protection of Waters) Regulations 2009, with regard to storage facilities, concerning the protection of waters against pollution caused or induced by nitrates from agricultural sources. Developments will be required to comply with relevant measures, which operate to protect water quality from pollution by agricultural sources. The disposal and storage of agricultural waste shall comply with the standards required by Council.

AGR5: To permit the development of new, appropriately located and designed agricultural buildings, which are necessary for the efficient and environmentally sound use of the agricultural practice. New buildings will generally only be permitted in cases where there are no suitable redundant buildings on the farm holding which would accommodate the development and where the Council is satisfied that the proposal is necessary for the efficient operation of the farm. Developments shall be compatible with the protection of rural amenities, and should not create

a visual intrusion in the landscape or be the cause of an environmental nuisance.

Chapter 10: Heritage:

Section 10.3.9: Wicklow's Landscape: 3. Corridor Area: 4(a) - The N11:

This area covers the main access corridor area along the east of the County. The boundary of the eastern access corridor generally follows what is considered to be the areas upon which the greatest influence is exerted by this primary access route. This route, for the most part, runs through the more low lying and accessible tracts of land, dissects the Glen of the Downs wood in the north of the County and provides expansive coastal views north of Wicklow Town. This landscape area acts as the main connection between the major towns along the east coast of the County.

Appendix 1: Development and Design Standards:

Section 3: Commercial / employment development in rural areas (including agriculture, forestry and quarries)

Appendix 5: Landscape Assessment:

Section 4.5.4: Corridor Area: 4(a) - The N11

Section 5.3: Key Development Considerations

Section 5.3.14: Corridor Area KDC (see Appendix 4 Map 10.13(d)):

1. To protect views and prospects from the corridor area towards the surrounding landscape areas from development that would either obstruct the views / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect.
2. Development proposals within this area should aim to locate within existing clusters of structures / tree stands and avoid locating new development in open fields.

6.2. Natural Heritage Designations

6.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Murrough Proposed Natural Heritage Area (Site Code: 000730), approximately 1.6km east of the site.
- The Murrough Wetlands Special Area of Conservation (Site Code: 002249), approximately 1.6km east of the site.
- The Murrough Special Protection Area (Site Code: 004186), approximately 1.7km east of the site.

6.3. EIA Screening

6.3.1. Having regard to the minor nature and scale of the development proposed for retention, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, and the separation distance from the nearest sensitive location, 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.

7.0 The Appeal

7.1. Grounds of Appeal

- This non-residential holding has been farmed by the applicant on a part-time basis since his acquisition of the lands in 2015. In this regard, the Board is referred to the accompanying correspondence / documentation as evidence of the legitimacy of his farming / agricultural activities. At present, the landholding supports a variety of livestock (sheep, goats & horses) and a number of beehives with additional activities conducted from other rented farmland. The applicant utilises traditional farming practices / methods and has sought to rear older breeds of livestock.

- While the lands in question were previously served by a running water supply, this was cut off due to a dispute with the result that the applicant was required to undertake daily / weekly runs hauling water tanks to the site. Accordingly, it was decided to drill a well on site, however, this also necessitated the securing of the supply within a pumphouse due to instances of anti-social behaviour as well as threats from parties that the well would be contaminated with diesel thereby rendering the water unsuitable for consumption.
- Following completion of the well & pumphouse, it was decided to develop the farm further through the construction of a number of additional buildings which were considered to comply with the exempted development provisions of the Planning and Development Regulations, 2001, as amended. Whilst a Section 5 referral determined that the aforementioned structures were not exempted development, it was considered that the case of the Planning Authority lacked merit and thus the decision was made to commence works on the construction of the buildings up to floor level. Similar to the proposed pumphouse, the design and finish of these structures was intended to reflect more traditional agricultural construction in accordance with the development & design standards set out in the County Development Plan. However, following the receipt of a Warning Letter, the construction works ceased and efforts were then made to regularise the situation through recourse to the lodgement of multiple Section 5 referrals and planning applications, although the farming of the lands continued.
- The proposed pumphouse is screened to the north, south and west by mature broadleaf forest and further forestation is planned, including the provision of new shelter belts.
- The proposed development site is located in a rural area outside of the Newcastle town boundary where the predominant land use is characterised by agriculture and associated development.
- The proposed development comprises an agricultural structure that will provide a safe and secure water supply essential to the operation of the farm.
- The applicant is preparing a 5-10 year farm plan with the technical assistance of an agricultural advisor, however, he is not in a position to implement this

plan until such time as the threat of enforcement action by the Planning Authority has been lifted.

- The applicant is a *bona fide* part-time farmer who uses these lands for agricultural purposes only. Furthermore, he has a family home in Bray and has no intention of developing a dwelling on the lands.
- The applicant has no secure animal housing, fodder sheds or barns with the result that all livestock, feedstuffs and agricultural machinery on site are exposed to the elements. The property has therefore been subjected to repeated acts of vandalism and burglary with multiple incidents having been reported to An Garda Síochána, including threats to contaminate the water supply. The proposed pumphouse was constructed in response to these threats and will aid in securing the farm.
- The accompanying correspondence and supporting documentation clearly justify the retention of the existing well and pumphouse.
- The positioning of the well at the highest point of the site accords with the advice of the Environmental Protection Agency which states that '*Whenever possible, wells should be located at higher elevations than the surrounding areas to decrease the potential for contamination*'.
- Notwithstanding the elevated nature of the site, the building is question is of a minor nature and can be easily screening through the provision of planting. Furthermore, it has been located distant from any other dwellings or farm buildings.
- Given the absence of any reference to the elevated nature of the site in the Planning Authority's previous refusal of PA Ref. No. 18/298, it is submitted that such a reason cannot now be applied to the subject proposal.
- The rationale for refusing the application on the basis that it will consolidate unauthorised development has not been explained clearly. The well and pumphouse were constructed more than a year in advance of the alleged unauthorised development whilst those later structures are considered to constitute exempted development.

- There is no legal requirement for an existing farmyard to be in place in order to allow small agricultural developments (please refer to the Board's previous determination of ABP Ref. No. ABP-300773-18).
- The proposed well and pumphouse will not impact on the road network.

7.2. Planning Authority Response

None.

7.3. Observations

7.3.1. *Brian & Maureen MacDiarmada:*

- Contrary to the appellant's assertions, the observers are not the owners of multiple properties and only own their existing dwelling where they have resided since 1977.
- The design and external finish of the proposed pumphouse is unsuited to the character of this scenic rural landscape.
- There is an on-going legal dispute between the observers and the appellant as regards ownership of part of the site boundary.
- The proposed buildings would appear to be more reminiscent of a residential design and layout as opposed to stables.
- The proposed well is at a greater depth and is very close to the observers' own well and thus there are concerns that it may interfere with their water supply.

7.4. Further Responses

None.

8.0 Assessment

8.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the proposed development
- Overall design and visual impact
- The potential for the consolidation of unauthorised development
- Impact on adjacent property
- Appropriate assessment

These are assessed as follows:

8.2. The Principle of the Proposed Development:

8.2.1. From a review of the available information, and having conducted a site inspection, it is apparent that the proposed development site comprises a non-residential landholding that has been subdivided into a series of paddocks and which is presently being actively used for agricultural purposes, including the grazing / rearing of a variety of livestock (sheep, goats, and horses etc.). In this respect, I am satisfied that the provision of a clean and reliable water supply is conducive to good practice as regards animal husbandry. In support of the proposal, I note that the applicant has referred to a dispute (the nature of which has not been disclosed) that seemingly resulted in the loss of access to a piped water supply which consequently necessitated water tanks having to be hauled to the site on a daily / weekly basis and, therefore, the rationale for providing an on-site supply would seem to be well founded. With regard to the need to secure the well within an enclosed pumphouse, it has been submitted that the necessity for same has arisen due to previous incidences of trespass, theft and other anti-social behaviour on site, in addition to threats by unidentified parties to contaminate the water supply, and I am amenable to this explanation.

8.2.2. Accordingly, having regard to the site location in a rural area where the predominant land use is agriculture, the limited scale and intended use of the proposed development for agricultural purposes, the need for a secure and reliable water source in terms of promoting good agricultural practice and animal welfare, and as

agriculturally-related developments such as that proposed are an inherent part of rural life and should generally be accommodated within such areas, I am of the opinion that the subject proposal is acceptable in principle at this location.

8.3. Overall Design and Visual Impact:

- 8.3.1. In assessing the overall design and visual impact of the proposed development, at the outset, and in a wider context, I would draw the Board's attention to Landscape Objective NH49 of the Wicklow County Development Plan which requires all development proposals to have regard to the County landscape classification hierarchy and, in particular, the key landscape features and characteristics identified in the Wicklow Landscape Assessment and the '*Key Development Considerations*' set out for each landscape area as detailed in Section 5 of the Wicklow Landscape Assessment. In this regard, I would advise the Board that the subject site is located within the '*Corridor Area: 4(a) - The N11*' landscape categorisation which is described as covering the main access corridor area along the east of the County. The boundary of this eastern access corridor generally follows what is considered to be the areas upon which the greatest influence is exerted by the N11 National Route whilst the route itself, for the most part, runs through the more low lying and accessible tracts of land, dissects the Glen of the Downs wood in the north of the County and provides expansive coastal views north of Wicklow Town. This landscape area is considered to act as the main connection between the major towns along the east coast of the County.
- 8.3.2. Notably, the '*Corridor Area*' is not identified as either an '*Area of Outstanding Natural Beauty*' or an '*Area of High Amenity*' in the Development Plan which are both afforded a greater level of protection as regards the preservation of their respective landscape characters. Indeed, within the landscape hierarchy set out in the Landscape Assessment appended to the Development Plan (descending from Nos. 1-6 with the most sensitive / important landscape comprising the '*Mountain and Lakeshore AONB*' and the least notable landscape classification being the '*Urban Area*'), the '*Corridor Area*' occupies a position at No. 4 within the lower ranks of the county landscape categorisation.
- 8.3.3. In reference to the '*Key Development Considerations*' for the Corridor Area (as set out earlier in this report), from a review of Map Nos. 10.14A & 10.15 of the

Development Plan, I am satisfied that the development in question will not obstruct any view or prospect of special amenity value or special interest identified in the Plan nor will it form an obtrusive or incongruous feature within any such view / prospect (KDC No. 1). Similarly, although the development in question will be located on a locally elevated plateau, it will be bounded in part by woodland, will not be overtly visible in a wider context, and will not detract from the prevailing landscape character of the surrounding primarily rural area. Accordingly, it is my opinion that the proposal will not contravene the provisions of KDC No. 2.

- 8.3.4. Therefore, I am satisfied that the subject development will not unduly interfere with the character of the landscape, or any view or prospect of special amenity value or special interest, the preservation of which is an objective of the Development Plan.
- 8.3.5. In terms of the actual design and siting of the structure having regard to the provisions of Objective AGR5 of the Development Plan, which seeks to ensure that agricultural buildings are suitably located and designed so as to be compatible with the protection of rural amenity and do not give rise to visual intrusion in the landscape, the overall scale of the pumphouse is very small whilst the external finishes are of a high standard (i.e. natural stone facing, granite quoins, brickwork detailing, and a slate roof) and would seem to be intended to reflect the more traditional construction of older vernacular structures common to rural areas. Furthermore, although it occupies a locally elevated position atop a rise within the south-western corner of the site which offers expansive views eastwards towards the sea, given the separation / set-back of approximately 140m from the roadway, the lightly trafficked nature of this minor rural roadway, and the overall scale of the construction, I would suggest that any visual impact in a local context will be minimal (although screening / planting could be required by way of condition should the Board deem this necessary).
- 8.3.6. Accordingly, having regard to the foregoing, and in light of the site context, I am satisfied that the subject proposal will not unduly impact on the visual amenity or landscape character of this rural area.

8.4. The Potential for the Consolidation of Unauthorised Development:

- 8.4.1. Concerns have been raised as regards the relationship of the proposed development with the 2 No. other partially completed structures present on site (including that which forms the subject matter of a Section 5 referral lodged with the Board under ABP Ref. No. ABP-306369-20) to the effect that it has been suggested the well / pumphouse will serve to consolidate unauthorised development.
- 8.4.2. Considering the nature of the subject development, in my opinion, it does not involve the extension, alteration, repair or renewal of an unauthorised structure nor is it intrinsically reliant on the other structures on site. I would also suggest that the Board may wish to take cognisance of its decision-making with regard to ABP Ref. No. ABP-306369-20. Moreover, it is clear that the subject application has been purposely lodged in an effort to regularise the planning status of the existing well / pumphouse. Accordingly, I am not of the opinion that the subject proposal warrants refusal on the basis that it would consolidate unauthorised development.

8.5. Impact on Adjacent Property:

- 8.5.1. In reference to an apparent legal dispute between the applicant and the third-party observers as regards ownership of part of the site boundary, it is not the function of the Board to adjudicate on property disputes or to act as an arbitrator in the assessment of such matters. Any such issue is essentially a civil matter for resolution between the parties concerned. Moreover, I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that *'A person shall not be entitled solely by reason of a permission under this section to carry out any development'* and thus any grant of permission for the subject proposal would not in itself confer any right over private property.
- 8.5.2. With regard to the assertion that the proposed development could interfere with the observers' own water supply, whilst it is regrettable that no details have been provided of the location, depth and yield etc. of the respective wells, in the absence of any evidence to support such a contention, it is my opinion that any such claim has not been substantiated. Furthermore, given the intended use of the applicant's well for agricultural purposes and the limited demand placed on the groundwater resource as a result of same, I am unconvinced that the proposed development would result in any significant impact on well yields in the surrounding area.

8.6. Appropriate Assessment:

- 8.6.1. Having regard to the minor nature and scale of the development under consideration, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

9.0 Recommendation

- 9.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be granted for the retention of the proposed development for the reasons and considerations, and subject to the conditions, set out below:

10.0 Reasons and Considerations

- 10.1. Having regard to the pattern of development in the vicinity, the nature of the development proposed to be retained, and the established nature of the agricultural land use, it is considered that, subject to compliance with the conditions set out below, the development for which retention is sought would represent an acceptable addition to this rural area where the established land use is agriculture, would not seriously injure the visual amenities of the area, would respect the existing rural character of the area, and would not be prejudicial to public health. The development proposed to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained 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.

Reason: In the interest of clarity.

Robert Speer
Planning Inspector

11th May, 2020