



Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 22/671

APPEAL by Mary Brassil and others care of Ger O'Keeffe Consulting Engineers Limited of Friary Lane/4 Day Place, Tralee, County Kerry against the decision made on the 17th day of August, 2022 by Kerry County Council to grant subject to conditions a permission to William and Brian O'Leary care of Phillip O'Dwyer of Foxfort, Causeway, County Kerry in accordance with plans and particulars lodged with the said Council.

Proposed Development: Retention of existing roofless cubicles their automatic scrapers, barriers and feed passages. Permission to construct a roof over these external easy feed cow cubicle areas with their feed barriers and feed passages. Permission for a new easy feed cubicle house with calving pens. Permission for a new milking parlour, dairy, roofed dairy holding yard complete with slatted slurry tanks, drafting area, cattle crush with part of dairy yard unroofed. Permission for new calf house with penning on site of old calf house and old milking parlour complex. Permission to extend the silage base and construct a wall at the west side and incorporate a manure pit with walls and effluent channel. Permission to construct a machinery shed. Permission to demolish old calf house, old milking complex, old dairy and all associated ancillary site works, all at Fortwilliam, Abbeydorney, Tralee, County Kerry.

Decision

GRANT permission for the above development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to:

- (a) the established agricultural activities carried out on site,
- (b) the location, nature, scale and design of the proposed development and development proposed to be retained,
- (c) the provisions of the Kerry County Development Plan 2022-2028, and
- (d) the specific characteristics of the site and surrounding area,

it is considered that, subject to compliance with the conditions set out below, the proposed development and development proposed to be retained would not seriously injure the residential amenities of the area or of property in the vicinity, would not have unacceptable impact on the landscape or on ecology, would not be prejudicial to public health and would constitute an acceptable use at this location. The proposed development and development proposed to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be retained, 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 required details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be retained, carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. A nutrient management plan complying with the requirements of the Good Agricultural Practice for the Protection of Water Regulations shall be submitted by the developer to the planning authority and agreed in writing prior to commencement of development.

Reason: In the interest of public health.

3. The colour of the proposed farm structures hereby permitted shall be dark grey, grass or dark green, dark brown, dark red or unfinished concrete. Roof colours shall be darker than wall colours.

Reason: In the interest of visual amenity.



4. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. The proposed development shall be designed, sited and constructed in accordance with the Department of Agriculture, Food and the Marine specification, as per the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022 (S.I 113 of 2022).

Reason: In the interest of public health and residential amenity.

6. All uncontaminated surface water, including roof water, shall be separately collected and shall not under any circumstances be allowed to discharge to the foul storage facilities.

Reason: In the interest of public health.

7.
 - (a) All waste generated during construction, including surplus excavation materials, shall be taken off site, shall be recovered or disposed of at an authorised site which has a current waste licence or waste permit in accordance with the Waste Management Acts 1996-2008. This shall not apply to the reuse of excavated uncontaminated soil and other naturally occurring material within the site boundary.
 - (b) The effluent storage tanks shall be constructed in accordance with the minimum specification documents issued by the Department of Agriculture, Food and the Marine, S123 Minimum Specification for Bovine Livestock Units and Reinforced Tanks.

- (c) The livestock sheds shall be constructed in accordance with the minimum specification document issued by the Department of Agriculture, Food and the Marine, S101 Minimum Specification for Agricultural Buildings.
- (d) All new buildings shall be cognisant of the separation distances as outlined in the European Union Good Agricultural Practice for the Protection of Waters Regulations 2021.

Reason: In the interest of public health.

8. The construction of the proposed development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide, inter alia, details and location of the proposed construction compound(s), details of intended construction practice for the proposed development, including hours of working, noise and dust management measures, asbestos survey and, if necessary a management plan for removing asbestos, measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and residential amenity.



9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.



Stewart Logan

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this *22* day of *February* 2024.