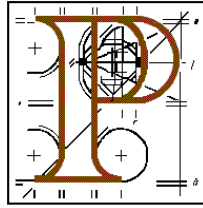


# An Bord Pleanála



## Inspector's Report

**PL 03.245584**

### Development

Extension to slatted shed.

Breaffy South, Milton Malbay, County Clare.

### Planning Application

Planning Authority: Clare County Council

Planning Authority Reg: Ref.: 15/498

Applicant: Noel Lahiff

Type of Application: Planning permission

Planning Authority Decision: Grant permission

### Planning Appeal

Appellant(s): Rita Kelly & Joe Harrison

Type of Appeal: Third v grant

Observers: None

Date of Site Inspection: 6<sup>th</sup> December 2015

**Inspector:** Karla Mc Bride.

## **1.0 INTRODUCTION**

### **1.1 Site and location**

The appeal site is located in a coastal area to the W of Miltown Malbay and N of Spanish Point in west Count Clare and the surrounding area is rural in character. The site is located to the W of the R482 regional road, within an existing farm complex and to the rear of an existing dwelling house and within c.1km of the coastline. The existing slated shed on the site is visible from the public road and there are several detached houses located along this road to the N and S of the site.

Photographs in Appendix 1 describe the site and location in detail.

### **1.2 Proposed Development**

Permission is being sought to construct a 97sq.m. extension to the SE side of an existing 272sq.m. livestock slated shed on a 0.2558ha site:

- The existing shed is 12.5m wide, 26m long and 5m high.
- The proposed extension would be 12.5m wide, 7.5m long and 5m high and it would contain 3 slated units and a feeding passage.
- Access via the existing entrance of the R482-20 regional road.
- All associated site works.

### **1.3 Planning Authority's Decision**

The Planning Authority decided to grant planning permission for the proposed development subject to 8 standard conditions.

- Condition no.5 stated that any increase in stock numbers shall be restricted so that adequate capacity is available to meet the requirements for slurry storage.
- Condition no.6 stated that any increase in stock numbers should be restricted so that the amount of manure applied in any year to land on a holding, together with that deposited to and by livestock, should not exceed an amount containing 170g of nitrogen per ha.
- Condition no.7 stated that slurry should not be spread on lands during the period 15<sup>th</sup> October to 15<sup>th</sup> January or during wet weather or non-frozen ground .

This decision reflects the report of the County Planning Officer.

**Interdepartmental reports:** none received.

**Prescribed bodies:**

An Taisce requests that an Appropriate Assessment be carried out, it raises concerns in relation to groundwater protection and states that spreading waste on land at this location should not be undertaken.

**Public submissions:**

One objection received from Rita Kelly and Joe Harrison who raised concerns in relation to adverse impacts on residential amenity.

One submission received from Councillor Michael Hillary.

#### **1.4 Planning history**

*Reg.Ref.95/371:* permission granted for the construction of a slatted house and calving boxes on the subject site.

*Enforcement:* No record of any enforcement proceedings.

*Pre-planning:* No record of any meetings.

#### **1.5 Appropriate Assessment**

The Planning Authority carried out a screening exercise for Appropriate Assessment given that the proposed development would be located within c.113m of two European Sites. The screening report concluded that a full AA is not required, having regard to the information available, the nature of the proposed development, the nature of the proposal site and the separation distance from the relevant European sites.

## **2.0 COUNTY CLARE DEVELOPMENT PLAN 2011-2017**

**Landscape:** Located within a “Heritage Landscape Type 4 The Coast.

**Objective CDP16.5:** requires that all proposals in Heritage Landscapes, demonstrate that every effort has been made to reduce visual impact.....all proposed developments in these areas will be required to demonstrate:

- The sites have been selected to avoid visually prominent locations.
- Site layouts avail of existing topography and vegetation to minimise visibility from scenic routes, walking trails, amenities and roads.

- That the design minimises height and visual contrast through careful choice of forms, finishes and colour and that any site works seek to reduce the visual impact of the development.

***Natural Heritage:***

- *Carrowmore Point to Spanish Point pNHA*
- *Carrowmore Point to Spanish Point SAC*
- *Mid Clare Coast SPA*

***Built heritage:***

- No Recorded Monuments, Protected Structures or Architectural Conservation Areas in the vicinity.

***Scenic routes: Objective DCP16.6 seeks to:***

- To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;
- To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;
- To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

***Development Management Guidelines: Agricultural Developments***

Section A1.8 states that in considering proposals for agricultural development (including sheds) the PA will have regard to the Department of Agriculture Guidelines and Recommendations on the Control of Pollution from Farmyard Wastes together with the following:

- Siting and design, which should be in sympathy with the area.
- The use of muted coloured materials.
- Grouping of buildings will be encouraged.
- Adequate effluent storage facilities.
- Adequate provision for the collection, storage and disposal of effluent produced from agricultural developments.

The Living Farmland, a guide to farming with nature in Clare (2008) provides advice for planning farm developments.

### **3.0 APPEAL**

#### **3.1 Third Party appeal**

Rita Kelly and Joe Harrison who live in the neighbouring house raised the following concerns:

- Inadequate separation distances, the existing shed is located within 35m of their house and within 4m of site boundary; the proposed extension will be within c.3.2m of boundary at its closest point.
- Condition no.5 of the original permission for the shed provided for “an average of not more than 30 livestock units” and the application refers to the existing shed having capacity for 63 cattle; approval for the extension would legitimise a breach of Condition no.5.
- The proposed extension, with increased capacity of 25 will give rise to a total area of 382sq.m with capacity for 88 cattle with increased potential for air and noise pollution.
- Teagasc guidelines refer to a 100m separation with a neighbouring property, and that the neighbour’s permission must be given in order to be exempt from planning; the neighbour did not comply.
- The slatted section will be on the SE gable of the shed and all of the increased capacity will be housed at the closest point to their house.
- This proximity and increased capacity will give rise to noise and air pollution as well as odours from silage and slurry with adverse impact on residential amenity, loss of privacy and property devaluation; and the PA had no regard to the 2006 Environmental Noise Regulations.
- The existing shed has approval for a 243m<sup>3</sup> slurry tank which will increase to c.340m<sup>3</sup>; at least 97m<sup>3</sup> of toxic slurry will be stored, agitated and moved from a tank located within 25m of their house: with adverse impacts on public health and safety.
- Alternative options would be to build a separate stand-alone unit on another part of the landholding or to build the extension on the N side of the existing shed.
- The site is located within a Sensitive Landscape, along a Scenic Route which incorporates the Wild Atlantic Way and within a popular tourist area; the PA did not take the Scenic Route into consideration, did not apply Objective CDP16.6 or carry out a landscape assessment.

- The application proposes to “provide better management of existing livestock”; the existing herd is located some distance from the site; the increased numbers arose as a result of the farm being extended; this application would serve to further intensify farming activity close to their house; and prevailing winds are from the N.
- Illegal burning of farm plastic on site.

### **3.2 First party response submission**

McKenna Consulting Engineers submitted a response on behalf of the First Party, Noel Lahiff:

- No evidence that the location of agricultural sheds within 25-30m of an existing house would have an effect on value.
- The nearest corner of the extended shed would be c.25m from the rear of the Appellant’s house and c.13.3m from the nearest boundary to the NW with little change to the current layout.
- The proposal would allow the applicant to better manage his existing farm stock and to keep them in-doors in bad weather.
- In order to locate a slated shed within 100m of a neighbouring property, the neighbours consent must be acquired in order for it to be exempted development, otherwise planning permission is required, and the applicant has applied for permission.
- Every effort has been made to reduce negative visual impacts along a Scenic Route in line with CDP 16.6 and the height and external finishes would match the existing shed.
- Proposal will not give rise to environmental nuisance; the existing farm has always been maintained in accordance with all relevant regulations; and the prevailing winds are from the S and SW so any possible odours would be carried away from the site.
- No illegal burning of rubbish which is collected and taken away by Clean Ireland recycling (letter on case file).
- Complies with the Core Strategy and all relevant planning policies and standards in relation to: - sensitive heritage landscapes; European sites; and agricultural developments in relation to siting, design, layout, effluent storage and management.

- The Board has set a precedent for similar developments under PL01.219150 where it was noted that “having regard the proposed development and its location within an established rural area, it is considered that .... the proposed development would not be prejudicial to the rural environment ....” Case nos. PL88.222584, PL17.225417, and PL88.242440 are also relevant.

### **3.3 Planning Authority response**

The Planning Authority raised no new issues other than to re-state that the proposal is acceptable as it would be located within an established farm complex.

### **3.4 Prescribed Bodies**

The appeal was not circulated to any prescribed bodies.

### **3.5 Further information request**

The site is located in close proximity to two European sites, the Carrowmore Point to Spanish Point SAC (01021) and the Mid Clare Coast SPA (004182). The proposed extension would be located directly adjacent to and within c.3m of a small stream that drains into the European sites a short distance to the W. The applicant did not submit a Stage 1 AA Screening Report or a Stage 2 NIS although the planning authority carried out an AA Screening exercise which concluded that a full Appropriate Assessment was not required.

Given that there is a direct aquatic connection between the proposed development and the European sites over a very short distance, and having regard to the scale of the proposed construction works and the use of the proposed extension, the application should have been accompanied by a Stage 2 Natura Impact Statement (NIS). A Stage 2 NIS is required in order to enable the Board to carry out a full Appropriate Assessment of the potential impacts of the proposed works on the nearby European sites and their conservation objectives.

The applicant submitted a Stage 2 NIS which identified the two European sites in section 3, described the proposed works in section 4 and provided an assessment of the site and the surrounding area in section 5. The potential direct and cumulative impacts of the proposed development are identified and assessed in section 6. The mitigation measures contained in section 7 deal with surface water run-off, the construction phase, no slurry spreading in lands adjacent to the land drain or the cliff, no concreting or storage of silage bales within 10m of

the drain, no animals within 2m of the drain; planting a fenced corridor along the drain; rubbish and pallets to be cleared from along the drain; and compliance with all regulations. Measures to deal with the construction phase include silt straps, offsite disposal of excess concrete and fuels, no storage of materials within 20m of the drain, bags and sacks to be stored on pallets, no burning of waste, equipment maintenance, and report any pollution events to the Council. Section 8 concludes that the European sites will not be adversely affected.

### **3.6 Further submissions**

#### **3.6.1 *Planning authority response***

The planning authority raised no new issues.

#### **3.6.2 *Third party response***

- According to the NIS the extension should not occur on the SE side of the existing shed because of the risk of run-off to the adjacent drain and shoreline.
- The proposal provides for an increase of 39.7% over existing capacity which will be located closer to the adjacent drain the protection of which is the main focus of the mitigation measures.
- The increased capacity will increase the volume of pollutants from slurry, soiled cattle bedding, baled silage, baled plastic and fuels which will in turn increase the risk of run-off to the drain to adversely affect the European sites.
- No NIS mitigation measures to manage a possible pollution event that could affect the shoreline such as silt fences, spill kits and safety procedures for the management of fuel or slurry spills.
- The mitigation measures do not adequately address the heightened risk arising from increased intensified farming close to the house and land drain.
- The NIS highlights deficiencies in the operation of the existing slatted shed, the capacity of which appears to be more than that provided for in the original planning permission.
- Request clarification in relation to the following mitigation measures:
  - (a) *Fencing and planting*: part of the land along the drain is owned by the appellant (Land registry details attached) and it



is unclear as to what area along the land drain makes up the fence corridor, however the appellant is happy to grant access to the corridor for maintenance.

- *Fencing*: no details provided however a concrete post and rail is preferred.
- *Planting*: Olearia hedging is most suited to succeed in an exposed coastal location.

(b) *Disposal of bale plastic*: no reference in the NIS to arrangements for the disposal of bale plastic which should not be burned, appropriate disposal measures are required.

(c) *Storage of soiled straw/cattle bedding*: no reference in the NIS to arrangements for the storage of this material which should not be stored close to the land drain and appropriate storage measures are required.

(d) *Maintenance of land drain*: happy to accommodate the regular maintenance of the land drain and adjacent area and appropriate on-going maintenance measures are required.

- Significant increase in tourist traffic along the R482 which is part of the WWW and agree with the Council's conclusion that this tourist route needs to be preserved.

## **4.0 REVIEW OF ISSUES AND ASSESSMENT**

The main issues arising in this case are:

1. Principle of development
2. Visual amenity
3. Residential amenity
4. Environment
5. Appropriate Assessment
6. Other issues

### **4.1 Principal of development**

The proposed extension to the existing slatted shed would be located within an established farm complex in a rural area, and it would allow for improved husbandry of an existing cattle herd. Therefore the proposed development is considered acceptable in principle.

### **4.2 Visual amenity**

The proposed development would be located within a rural area and Heritage Landscape, and along a scenic route which forms part of the Wild Atlantic Way. The Appellants have raised concerns in relation to the visual impact of the extended shed at this scenic tourist location.

The proposal would form part of an existing farm complex. The proposed extension (97sq.m.) would enlarge an existing slatted shed (272sq.m) to provide three additional slatted units. The existing shed is 12.5m wide, 26m long and 5m high and the proposed extension would extend the length of the existing shed by 7.5m with no change to the height or width.

The extended shed (369sq.m) would respect the height, width and external finishes of the existing shed in line with Development Plan requirements. The proposed extension would also be acceptable having regard to the rural character of the area and the presence of an established farm complex on the site.

### **4.3 Residential amenity**

The Appellants have raised concerns in relation to the impact of the proposed development on their residential amenities. The proposed extension to the existing slatted shed would be located within an

established farm complex in a rural area. Although it would be located in closer proximity to the neighbouring house than the existing shed, it would not have an adverse impact on residential amenities by way of overlooking, overshadowing or loss of privacy. Given that the overall structure would be located within an exposed coastal location it is likely that any additional odours emanating from the shed's activities would be rapidly disseminated by the prevailing winds.

#### **4.4 Vehicular access:**

The proposed access arrangements which utilise the existing access of the regional road are considered acceptable in terms of traffic safety and the sightlines are adequate in either direction.

#### **4.5 Environment**

The proposed development would increase the capacity of the existing slatted shed and underground tank to accommodate additional cattle including 15 beef and 10 young cattle. This would in turn give rise to additional fodder, silage, slurry and soiled bedding that would need to be stored and disposed of in an environmentally friendly manner in line with all relevant regulations, standards and guidelines. This issue could be addressed by way of planning conditions.

The proposed development would be located within a coastal location in close proximity to a watercourse that drains into the shoreline less than 1km to W which forms part of two European sites. The Appropriate Assessment issues are addressed in section 4.6 below.

The Appellants have raised concerns in relation to land ownership along the watercourse, they have no objection with granting access to the site via their portion of the land however they would like the fence to comprise a concrete post and rail and for Olearia hedging to be planted as it is suitable in an exposed coastal location. This issue could be addressed by way of a planning condition.

Other environmental issues raised by the Appellants in relation to the storage and disposal of bale plastic and soiled bedding could be addressed by way of a planning condition.

#### **4.6 Appropriate Assessment**

##### ***Relevant European sites:***

Having regard to the contents of the NIS report and the conclusions reached in relation to the screening out of any European

sites, the NPWS Site Synopsis and supporting documents, the observations received from the Prescribed Bodies and members of the public and to my assessment of the site and the surrounding area, the European sites therefore of relevance to the proposed development comprise:

- Carrowmore Point to Spanish Point SAC: Site code: 001021
- Mid Clare Coast SPA: Site code: 004182

The NPWS Site Synopsis and supporting documents are contained in Appendix 2 of his report.

### ***Qualifying Interests and Conservation Objectives***

The Qualifying Interests and Conservation Objectives, including any relevant attributes, measures and targets for these sites, are set out below.

***Name: Carrowmore Point to Spanish Point SAC - Site code: 001021***

*Site description:* The site comprises a strip of coastline, several offshore islands and rocks, and the open marine water of Mal Bay between the islands and the mainland. The site comprises small sand dune systems, shingle banks, Lough Donnell lagoon and extensive areas of mud/sand flats, and it is importance for water birds, grey seal and several plant species.

*Qualifying Interests:* The relevant QIs for this SAC are listed below:

Qualifying interests	
Coastal Lagoons (priority habitat)	Perennial Vegetation of Stony Banks
Reefs	Petrifying Springs (priority habitat)

***Conservation objective:*** To restore the favourable conservation condition of the Qualifying Interests in Carrowmore Point to Spanish Point and Islands SAC which is defined by the following list of attributes and targets.

Qualifying Interest	Attributes	Targets
Coastal lagoons	Habitat area & distribution; salinity & hydro regime; barriers to connectivity; water quality; depth of Macrophyte colonisation; typical plant & animal sps.	Maintain stability
Reefs	Habitat area, distribution & community structure	Maintain stability
Perennial Vegetation of Stony Banks	Habitat area & distribution; sediment supply; vegetation structure & composition	Maintain stability
Petrifying Springs	Habitat area & distribution; hydro regime; water quality; vegetation structure & composition	Maintain stability

*Relevance of project to the management of the European site:* Not relevant

*Potential direct effects:* No adverse impacts on the stability of the QI habitats.

*Potential indirect effects:* No adverse impacts on the stability of the habitats.

*Potential in-combination effects:* Limited potential for in-combination impacts with existing slatted shed and other agricultural activities in the area that may give rise to run-off, although no adverse impacts on the stability of the QI habitats predicted.

*Mitigation measures:* The measures set out in section 7 of the applicant's NIS and summarised in section 3.5 above are considered adequate in relation to protecting the land drain and the nearby SAC from pollution during the construction and operational phases.

*Residual effects on QIs:* None predicted following the implementation of the NIS mitigation measures and planning conditions.

*NIS Omissions:* No significant omissions.

**Name: Mid Clare Coast SPA - Site code: 004182**

*Site description:* This site extends c.14km along the coastline from Spanish Point to just W of Doonbeg Bay. It comprises rocky shores, sandy beaches, rocky reefs, islands, open marine areas, and it is importance for several species of water birds and grey seal.

**Qualifying Interests:** The relevant QIs for this SPA are listed below:

Qualifying interests		
Cormorant	Sanderling	Turnstone
Barnacle Goose	Purple Sandpiper	Wetlands
Ringed Plover	Dunlin	

**Conservation objective (birds):** To maintain the favourable conservation condition of aforementioned bird species in Mid-Clare Coast SPA, which is defined by the following list of attributes and targets.

Qualifying interest	Attributes	Targets
Cormorant	Breeding population; productivity rate; distribution; prey biomass; barriers to connectivity; level of disturbance	No decline
Barnacle Goose	Population trend & distribution	Stable or increasing
Ringed Plover	Population trend & distribution	Stable or increasing
Sanderling	Population trend & distribution	Stable or increasing
Purple Sandpiper	Population trend & distribution	Stable or increasing
Dunlin	Population trend & distribution	Stable or increasing
Turnstone	Population trend & distribution	Stable or increasing

**Conservation objective (wetlands):** To maintain the favourable conservation condition of the wetland habitat in Mid-Clare Coast SPA as a resource for the regularly occurring migratory waterbirds that utilise it as defined by the following attributes and targets.

Qualifying Interest	Attributes	Targets
Wetlands	Permanent area occupied by the wetland habitat should be stable & not significantly less than the area of 4,641ha., other than that occurring from natural patterns of variation.	Maintain stability

*Relevance of project to the management of the European site:* Not relevant

*Potential direct effects:* No adverse impacts on the stability of the QI habitats.

*Potential indirect effects:* No adverse impacts on the stability of the habitats.

*Potential in-combination effects:* Limited potential for in-combination impacts with existing slatted shed and other agricultural activities in the area that may give rise to run-off, although no adverse impacts on the stability of the QI habitats predicted.

*Mitigation measures:* The measures set out in section 7 of the applicant's NIS and summarised in section 3.5 above are considered adequate in relation to protecting the land drain and the SPA from pollution during the construction and operational phases.

*Residual effects on QIs:* None predicted following the implementation of the NIS mitigation measures and planning conditions.

*NIS Omissions:* No significant omissions.

### **Conclusions:**

I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of the European sites (Site code: 001021 and Site code: 004182) or any other European site, in view of the site's Conservation Objectives.

## **5.0 RECOMMENDATION**

Arising from my assessment of the appeal case I recommend that planning permission should be granted for the proposed development for the reasons and considerations set down below and subject to compliance with the attached conditions.

## REASONS AND CONSIDERATIONS

Having regard to the provisions of the current Development Plan and to the nature, and scale of the development proposed, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be carried out 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The external finishes and colour of the structure shall match those of the existing slatted shed.

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

3. The development shall be constructed in accordance with the current formats of the Department of Agriculture, Fisheries and Food S123 Minimum Specification for Bovine Livestock Units and reinforced Tanks and S128 Minimum Specifications for Concrete Silage Bases.

**Reason:** In the interest of public health.

4. Any increase in stock numbers shall be restricted such that adequate capacity is available to meet the requirements for slurry storage as outlined in the EU (Code of Good Agricultural Practice for the Protection of waters) Regulations, 2014.

**Reason:** In the interest of public health.

5. Any increase in stock numbers shall be restricted such that amount of livestock manure applied in any year to land on the holding, together with that deposited to land by livestock, shall not exceed an amount containing 170kg of nitrogen per hectare, as outlined in the EU (Code of Good Agricultural Practice for the Protection of waters) Regulations, 2014.

**Reason:** In the interest of public health.



6. Slurry shall not be spread on the lands during the period 15<sup>th</sup> October to 15<sup>th</sup> January inclusive, or during we weather, or on frozen ground. Slurry spreading shall always be curtailed to the capacity of the land to retain, neutralise and assimilate the loading.

**Reason:** To prevent pollution and in the interest of the proper planning and sustainable development of the area.

7. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of Irish Water and the planning authority for such works and services. In this regard-

(a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and

(b) all soiled waters shall be directed to a storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

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

8. All effluents and farmyard manure shall be managed and disposed of in strict accordance with the EU (Good Agricultural Practice for Protection of Waters) Regulations, 2014.

**Reason:** In the interest of public health.

9. All soiled animal bedding, plastics and other surplus materials should be stored and disposed of in a responsible manner.

**Reason:** In the interest of environmental protection, public health and the proper planning and sustainable development of the area.

10. The site development and construction works shall be carried out such a manner as to ensure that the adjoining road is kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

**Reason:** To protect the residential amenities of property in the vicinity.

11. The site works and building works required to implement the development shall only be carried out between 7.00 hours and 18.00 hours, Monday to Friday and between 08.00hours and 14.00 hours on Saturdays and not at all on Sundays or Bank Holidays.

**Reason:** To safeguard the residential amenities of adjacent dwellings.

Karla Mc Bride

Senior Planning Inspector

16<sup>th</sup> March 2016