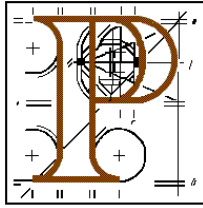


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## An Bord Pleanála



## Inspector's Report

**Development:** Retain and complete agricultural structure and all ancillary site works at Scartaglen village, Co. Kerry

### Planning Application

Planning Authority : Kerry County Council  
Planning Authority Register Reference : 15/864  
Type of Planning Application : Retention permission  
Applicant : Jerome Browne  
Planning Authority Decision : Grant subject to conditions

### Planning Appeal

Appellants : Maurice & Eileen Browne  
Type of Appeal : 3<sup>rd</sup> Party v. Grant  
Observers : None

**Inspector** : Pauline Fitzpatrick

**Date of Site Inspection** : 16/02/16

### Appendices

1. Photographs
2. Extracts from the Kerry County Development Plan 2015

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## 1. SITE LOCATION AND DESCRIPTION

The site in question comprises an established farm yard complex behind four dwellings accessed via a minor county road in the village of Scartaglen which is c.7 km to the south-east of Castleisland.

The farmyard complex comprises a mix of slatted sheds, byres, and other agricultural buildings positioned along the southern site boundary of the yard. Access to the complex is between two of the dwellings with a further access to the west by the side of the appellants' dwelling which also provides access to lands to the south.

The farmyard complex is lower than the dwellings with the boundary to the appellants' property delineated by a block wall. The appellants' have a shed and trees along the boundary which provide for a certain level of screening. Their boundary to the agricultural track to the west is largely open.

## 2. PROPOSED DEVELOPMENT

Permission is being sought for:-

- (a) retention and completion of an agricultural structure incorporating slatted units and underground tanks, milking parlour and milk storage areas, calving area, bedding area, feeding passage and ancillary facilities
- (b) construct retaining wall to the south-east of the structure
- (c) two silos
- (d) revised boundary screening.

**Note:** Two submissions in objection to the proposal received by the PA have been forwarded to the Board and are on file for its information. An unsolicited response was made by the agent for the applicant.

## 3. TECHNICAL REPORTS

The **County Archaeologist** in a report notes that there are no recorded monuments in the area and the site has been previously disturbed.

The **Fire Authority** has no objection.

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The **Planner's** report (countersigned) states that given the nature of the development and the existing established agricultural use on the site it is not anticipated that the proposal would have a significant negative impact and would not be seriously injurious to the amenities of adjoining property. Although the building is large its location behind existing dwellings and the fact that the land slopes away from the road means that it is not readily visible from the public road and is not visually obtrusive. The existing dwellings adjoining have some screening in place along their rear boundaries. On inspection of the ordnance survey maps it would appear that there were agricultural buildings on this site prior to the construction of the adjoining dwellings. A grant of permission subject to conditions is recommended.

#### **4. PLANNING AUTHORITY'S DECISION**

The PA decided to grant retention permission/permission for the above described development subject to 6 conditions between two schedules the 1<sup>st</sup> addressing the development to be retained and completed and the 2<sup>nd</sup> for that remaining.

**Condition 6** requires the site to be landscaped in accordance with a scheme prepared by a suitably qualified person.

#### **5. GROUNDS OF APPEAL**

The submission by IC Engineers on behalf of the 3<sup>rd</sup> party appellants which is accompanied by supporting documentation can be summarised as follows:

- The building is twice the floor area and 2.9 metres higher than that granted permission under ref. 12/768. There is an additional lean-to section adding to the footprint of the building. This is constructed over an existing farm road/historical footpath and was to be maintained as a roadway as described in conditions 8-10 attached to permission 00-1959.
- The building is less than 37 metres from the appellants' property and is visually obtrusive.
- The layout and location of slurry agitation points and food storage silos show no regard for neighbouring dwellings. Odours will be emitted throughout the year.
- The shed has the capacity to accommodate a greater number of cows than the 80 proposed and could be up to 140. Therefore the noise and odour impact on neighbouring dwellings will increase 4 fold from the applicant's milking quota of 33 cows and increase by two fold from the claimed 72 cows stated in the letter. There was no limit set by the PA.

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- The warehouse type design is not in keeping with the buildings in the rural area.
  - The landscaping scheme should have been sought by way of further information so as to allow the appellants to comment on same. They have no control or input on the nature, type or height of screening which could interfere with sunlight in their garden.
  - The nature of the development and address of the development is inconsistent in the public notices and application form.
  - The drawings do not delineate the north point and location of the site notice.
  - The development as described does not refer to the buildings to be demolished which are delineated on the site layout plan.
  - The access to the farm is immediately adjoining the appellants' dwelling and is outside the site boundaries.

**Note:** Details of the planning history on the applicant's lands in addition to what are considered to be non-compliance with the relevant permissions and unauthorised developments within the site are set out. Availability of documentation during the PA's assessment is also raised.

## **6. APPLICANT'S RESPONSE TO GROUNDS OF APPEAL**

The response by Ger O'Keeffe Consulting Engineers Ltd. on behalf of the applicant which is accompanied by supporting documentation can be summarised as follows:

- The plans and particulars lodged and public notices clearly identify the proposed works.
- The siting of the building is the same as that granted under ref. 12/768 which the appellants did not object to. The type of activities to be incorporated in the structure are no different to the types of activities envisaged in the structures which secured permission. As a consequence it is reasonable that the principle of extending the facilities was acceptable to them.
- Based on agricultural advice the applicant incorporated the various facilities within one roofed structure.
- The design is consistent with modern agricultural buildings.
- There will not be any housing or feeding of animals in the location of the access road.
- The agitation of slurry takes place where it was always intended.
- 72 cows were milked in 2015. The building is designed for a specific animal capacity. There is no intensification of use. The land and buildings on the farm are not capable of carrying 140 cows which would require 154 cubicle spaces.

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- The boundaries of the dwellings on the adjacent site on the upper side of the farm development were incorrectly mapped and therefore a Deed of Rectification had to be prepared to rectify the boundaries on the ground. This necessitated on site boundary removal and relocation in some areas. Any visual impact can be negated by screening.
  - Whilst the building can be seen from part of the appellants' property it is considered that it does not have a negative impact on the enjoyment of their property.
  - The requirement for a landscaping scheme by way of condition is normal practice.
  - The roof profile continued the line of the existing slatted unit roof which necessitated the increase in height of the building.
  - Demolition is not included in this application as it is covered by permission 12/768. It is the clear intention to demolish the relevant structures.
  - There is no knowledge of a historic walkway closed in by the lean-to or knowledge of any rights of way. There is no public access along this particular passageway.
  - The entrance beside the appellants' house has been in place and used for many years although the entrance area may have been improved to allow better farm access/egress.

**Note:** The submission responds to the alleged non-compliance of previous permissions and the issue of documentation made available.

## **7. PLANNING AUTHORITY'S RESPONSE TO GROUNDS OF APPEAL**

No response received.

## **8. OBSERVATIONS**

None

## **9. SECTION 131 NOTICE**

The Department of Arts, Heritage and the Gaeltacht were invited to make a submission on the appeal by way of Section 131. No response was received.

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## 10. RELEVANT PLANNING HISTORY

**PL08.124131 (1959/00)** – permission granted for retention of slatted shed on the site.

**12/768** – permission granted for demolition of 2 no. existing agricultural buildings, remove canopy from existing slatted unit, erect new slatted unit, milking parlour with office, power room, storage area and bulk tank storage area, machine shed and ancillary site works.

The appellants' submission further details the planning history on the site.

## 11. DEVELOPMENT PLAN PROVISIONS

The **Kerry County Development Plan 2015** refers.

The site is within an area zoned Rural General – such an area constitutes the least sensitive landscape and has the ability to absorb a moderate amount of development without significantly altering its character.

In terms of development management Section 13.12 states that the following will be taken into account in all proposals for new agricultural buildings:

- Proximity to adjacent buildings
- The rural character of the area
- Waste management in terms of storage and disposal
- Environmental carrying capacity
- It is a requirement that agricultural buildings are designed, located and orientated in a manner that will minimise their environmental impacts.
- All agricultural development that results in manure, soiled water and slurry etc. shall comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regs. 2010 [S.I. No. 610 of 2010], as amended by European Communities (Good Agricultural Practice for Protection of Waters Amendment) Regs, 2011 [S.I.No. 125 of 2011] and/or any substituting or amending regulations.

## 12. ISSUES AND ASSESSMENT

As is evident from the details available from the ordnance survey maps and aerial photographs the appeal site constitutes a long established farm complex behind a line of one off dwellings which have been developed fronting onto the road and which are occupied by family members. The farm complex is made up of the older

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buildings positioned in the south-eastern corner including an existing slatted shed, haybarn and other outbuildings. The structure subject of this application is largely complete and is located in the south-western section of the yard to the south and downslope of the appellant's dwelling.

The agricultural building is to replace that granted permission under 12/768 which, in addition to the demolition of buildings within the yard, proposed a 2<sup>nd</sup> slatted unit/milking parlour/storage yard immediately adjacent to the existing slatted unit (the canopy of which was to be removed). The permission also provided for a machinery shed. I estimate that the floor area of the three units would have been in the region of 862 sq.m.

The proposed structure effectively entails the provision of all of the above uses within a covered floor area amounting to 1169 sq.m. This equates to an approx. 33% area increase over than granted permission. In addition the ridge height of 9.8 metres is in the region of 2.8 metres higher than the slatted unit which secured permission. As per the details accompanying the application the applicant currently milks 72 cows and proposes to increase this to 80 over the next couple of years in addition to increasing his heifers and calves from 29 to 40 and maintenance of 2 stock bulls.

The proposal can be considered as providing for modernisation of an existing use and it is contended that the arrangement will provide for a more efficient design than that previously permitted and which will reduce the amount of soiled water produced by inclusion of the previously unroofed solid collecting yard.

Whilst the appellants query whether the building will be able to accommodate a materially greater number of animals than heretofore the applicant has provided sufficient detail in this regard. I submit that due regard will be required to the statutory requirements as set out in the European union (Good Agricultural Practice for Protection of Waters) Regulations 2014 in terms of slurry storage requirements and farmyard management. All waste generated shall be discharged to slatted tanks with the provision of such structures required to meet with Department of Agriculture specifications and compliance with same will ensure cattle are appropriately housed and waste generated is appropriately stored and handled including spreading of slurry. Certainly the additional roofed yard and slatted shed will result in additional surface water runoff but it should also assist in minimising the risks of point source pollution from the yard.

Smells and fumes associated with the operation are normally most likely to give rise to complaints during agitation of the tank and during land spreading of waste at a particular time of the year. As this is an integral part of farming activity associated with the rural environment, I do not consider that it would be reasonable to refuse

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permission on this basis provided the facility is well managed. Noise from cattle housed in the shed in such a location would not be an unfamiliar occurrence.

Certainly the building is larger than that previously permitted but I consider that in the context of the location within an agricultural complex behind a line of dwellings it is largely screened from public view. The substantive issue in this regard is the visual impact from the appellants' property. The structure has a comparable setback from the shared boundary to that of the building granted permission under ref. 12/768. As noted on day of inspection views of the structure are limited, in part, by the large shed within the appellant's property (positioned along their rear boundary) with more open views available from the south-west and western side of their property. I consider that suitable planting along the shared boundary would assist in screening the building as to obviate visual intrusion.

This application before the Board stands on its merits and I note that contrary to the previous application no reference is made in the public notices to the demolition of other sheds within the yard which were referenced in 12/768 although they are delineated accordingly on the site layout plan accompanying the application. I note that such works are not required to have the benefit of permission.

Issues in terms of non-compliance with previous permissions granted are noted however the Board has no legislative role in terms of enforcement. This is a matter for the local authority. In addition the availability or otherwise of documentation during the PA's assessment is not a matter for comment by the Board.

Two access points are shown on the site layout plan, the first labelled as the main farm entrance on the site layout plan and the second being that to the west of the appellants' property labelled as gated alternative farm access on the said plan. Whilst the red site boundary does not extend along this access to the road it is reasonable to construe that the applicant has a right of way and as such can utilise same. No evidence to the contrary has been provided by the appellants.

The appellants' contention that the lean-to along the southern boundary blocks a right of way and that conditions 8-10 attached to the Boards' decision under ref. PL08.124131 for the original slatted shed at this location acknowledged and protected same. This is not my reading of the conditions which I submit refer to the lane to the west of the farmyard and appellant's property which remains clear of development. In addition there is no evidence to suggest there is a right of way along the southern boundary or in the vicinity of the lean-to but in the interests of clarity the applicant should be advised of Section 34 (13) of the Planning and Development Act 2000, as amended, that a person shall not be entitled solely by reason of a permission to carry out any development.



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The appellants query the inconsistencies in the public notices. In this regard I note that the wording in each is largely comparable with the address given as Scartaglen village with the nature and extent of the development subject of the application clear in both. As the appellants' have engaged in the planning process culminating in this appeal I submit that their 3<sup>rd</sup> party rights have not been compromised.

I consider that the plans and particulars that accompany the application provide adequate detail as to the works proposed and proposed to be retained. The absence of a north point or position of the site notice on the site layout plan are not considered material omissions.

### **AA – Screening**

The site is c. 1km to the west of the nearest point of Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) the qualifying interest for same being the Hen Harrier. To date generic conservation objectives apply namely to maintain or restore the favourable conservation status of habitats and species of community interest so as to contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.

Having regard to the nature and extent of the development within an existing farm complex within the village of Scartaglen no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **1. CONCLUSION AND RECOMMENDATION**

I recommend that retention permission and permission for the above described development be granted for the following reasons and considerations subject to conditions.

### **REASONS AND CONSIDERATIONS**

Having regard to the established use of the site for agricultural purposes and the nature and extent of the farm structure to be retained and completed it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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## CONDITIONS

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority 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 development to which this permission refers is as detailed on the plans and details accompanying the application, only, and does not refer to any other structure or works on the overall site.

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

3. The agricultural building shall be used only in strict accordance with a management schedule to be submitted to and agreed in writing with the planning authority, prior to commencement of development. The management schedule shall be in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2010 (S.I. No. 610 of 2010), as amended, and shall provide at least for the following:

- (1) Details of the number and types of animals to be housed.
- (2) The arrangements for the collection, storage and disposal of effluent.
- (3) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

**Reason:** In order to avoid pollution and to protect residential amenity.

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

**Reason:** In the interest of public health and to prevent pollution.

5. All uncontaminated roof water from the buildings shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.

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**Reason:** In order to ensure that the capacity of the seepage tank is reserved for its specific purpose.

6. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2009 (SI No. 610 of 2010).

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

7. Within two months from the date of this order a detailed landscaping scheme including details of all screen planting and timescale for implementation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interests of residential and visual amenity.

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**Pauline Fitzpatrick**  
**Inspectorate**

**March, 2016**