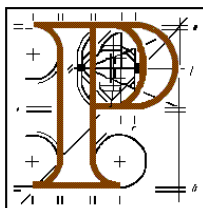


An Bord Pleanála



Inspector's Report

Development: Permission to retain agricultural structures for livestock housing with associated effluent collection tanks, extended silage base, dungstead and ancillary works. The development works consist of the completion of ancillary concrete areas and cleanwater drainage system, incorporating underground rainwater harvesting tank and works.

Location: Druminascart, Ballycommon, Nenagh, Co Tipperary.

Planning Application

Planning Authority: Tipperary County Council.

Planning Authority Reg. Ref.: 15/601041

Applicant: Patrick & Enda Slattery

Type of Application: Permission.

Planning Authority Decision: Grant Permission with conditions.

Planning Appeal

Appellant(s): Adam Courtney

Type of Appeal: Third Party v Grant.

Observers: None.

Date of Site Inspection: 27th May 2016

Inspector: Bríd Maxwell.

1.0 SITE LOCATION AND DESCRIPTION

1.1 The appeal site which has a stated area of 0.5782 hectares is located within the rural townland of Druminscart, Ballycommon which is approximately 6km to the north of the Nenagh Town and 2.6km to the southeast of the village of Puckaun, in north County Tipperary. The appeal site comprises a well-established farm yard incorporating a number of structures a mix of stores and cubicle houses a dairy parlour and slatted sheds located adjacent to the cul de sac road, which also serves a number of dwellings. The site is part of a larger landholding stated to be 29.5 hectares whilst the first party also leases an additional 50 hectares of farmland. The area is predominantly agricultural in character with scattered housing. There are three farming family owned dwellings to the east of and the south of the appeal site, and the third party appellant's dwelling is located to the west of the appeal site.

2.0 PROPOSED DEVELOPMENT

2.1 The application seeks permission to retain agricultural structures for livestock housing with associated effluent collection tanks, extended silage base, dungstead and ancillary works. Permission is sought to complete the ancillary concrete areas and cleanwater drainage system incorporating underground rainwater harvesting tank and works. The gross floor space of work to be retained is 796.6m².

3.0 HISTORY

3.1 No previous planning applications on the appeal site. Council Planning report notes enforcement file ref TUD-15-191.

3.2 Adjacent Sites.

- 07/510869 Permission granted to Patrick Slattery for house with entrance, septic tank and domestic garage.
- 03/51/0496 Permission granted to Enda Slattery and Eileen Kelly for bungalow, septic tank, entrance and ancillary works.
- 04/510445 Permission granted to Adam Courtney for extension to eastern side of residence. Granted 24/5/2004. 51/23084 Permission granted to Adam and Marie Courtney to erect dwelling septic tank and entrance.

4.0 DEVELOPMENT PLAN AND PLANNING POLICY

4.1 The North Tipperary County Development Plan 2010 as varied refers. Relevant policies include:

- *Policy ED7 Agriculture*
It is the policy of the Council

- (a) *To protect farms and high quality agricultural land from proposals for development where such would result in negative results upon their viability.*
 - (b) *To facilitate and encourage the development of alternative farm enterprises including agri-tourism development and farm shops subject to compliance with the development management standards set out in Chapter 10.*
- *Policy TI11: Management of Agricultural Slurries.*
It is the policy of the council to ensure that proposals for agricultural developments, as appropriate comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 or any amendment thereof.

4.2 EUROPEAN COMMUNITIES (GOOD AGRICULTURAL PRACTICE FOR PROTECTION OF WATER) REGULATIONS 2014

4.2.1 The Regulations provide statutory support for good agricultural practice to protect waters against pollution. The Regulations place certain obligations on occupiers of agricultural holdings in relation to farmyard management, collection and storage of manures, slurry, soiled water etc, nutrient management and prevention of water pollution. They also set out minimum requirements for storage, set limits on the land application of fertilisers and establish periods when land application of fertiliser (organic and chemical) is prohibited.

4.2.2 Under the Regulations, the country is divided into four areas with varying storage period requirements for livestock manure (Schedule 3). Prohibited spreading periods are set out in Schedule 4. The appeal site is within an area, which specifies a minimum storage period of 16 weeks. The land application of waste is prohibited between the period from October 15th to January 31st for organic fertiliser (other than farmyard manure) and from November 1st to January 31st for farmyard manure.

5.0 PLANNING AUTHORITY DELIBERATIONS AND DECISION

5.1 Submissions to the Planning Authority

5.1.1 Submission from the appellant objects to the development proposed for retention on grounds of proximity to residential property. It is asserted that the development will have a negative impact on residential amenity arising from fumes, noise and other disturbance. Development results in devaluation of residential property.

5.2 Interdepartmental Reports

- District Engineer's report indicates no objection.
- Environment Section report asserts that the development at the site will allow the applicant to expand and improve the efficiency of the current dairy farm in accordance with the Nitrates Regulations. The farm is

considered to be of a high standard in terms of agri-environmental compliance and does not appear to be of significant threat to the environment at present. No objection subject to conditions.

- AA screening report concludes that the development has no potential for significant effects therefore Appropriate Assessment is not required.
- Planner's report recommends permission subject to conditions.

5.3 Decision

Tipperary County Council decided to grant permission subject to 8 standard conditions as follows:

- Condition 1. Permission in accordance with plans and particulars.
- Condition 2. Development in accordance with the requirements of the European Communities (Good Agricultural Practice for Protection of Waters) Regulations. The development shall be designed and undertaken so as to minimise the generation of soiled water. Comply with construction specifications as may be approved from time to time by the minister for Agriculture and Food.
- Condition 3. Uncontaminated surface water to be collected separately and disposed to soakpits or recycled for use as part of the proposed development.
- Condition 4. Monitoring chamber for monitoring of uncontaminated surface / roof water.
- Condition 5. Farmyard wastes to be disposed of by land spreading.
- Condition 6. Transportation of farmyard wastes in a sealed and watertight tanker / container.
- Condition 7. Landscaping scheme to be implemented in the first planting season.
- Condition 8. Development Contribution of €1081.30 in accordance with the Tipperary County Council Development Contributions Scheme 2015-2019.

6.0 GROUNDS OF APPEAL

6.1 The third party appeal is submitted by Denis J Keane Solicitor on behalf of Adam Courtney, Druminascart, Ballycommon. Grounds of appeal are summarised as follows:

- Tipperary County Council failed in their duty as statutory undertaker to apply the law and to uphold and vindicate the property rights of Adam Courtney and his family whose house is 33 metres from the development.
- Tipperary County Council erred in law in failing to comply with Clause 10.7 of the North Tipperary County Development Plan 2010-2016 which requires that buildings housing animals be located a minimum of 100m from the nearest dwelling other than the applicant's dwelling and Article 6 Part 3 of the Planning and Development Regulations 2001-2012.

- The large scale development in close proximity to appellant's dwelling results in a significant loss of amenity due to emissions, noise and disturbance and results in devaluation of appellant's property.
- A member of the appellant's family has recently been diagnosed with asthma and the development has resulted in considerable stress.
- Note representations made by a local elected representative on behalf of the applicant.

7.0 RESPONSES

7.1 FIRST PARTY RESPONSE

7.1.1 The response submitted by Brian England, Design and Draughting Services, on behalf of the First Party is summarised follows:

- Farming activity has been undertaken at this location for over 100 years with the holding now being farmed by a third generation of Slattery's.
- When the appellant's constructed their dwellinghouse circa 2000 they did so in the context of the established farming activity at this location.
- An extension constructed circa 2004 had the effect of reducing separation distance to farm structure.
- Farm has developed and modernised and with an emphasis on dairy / milk production the requirement for increased housing and slurry storage requirements arises. A letter attached from agricultural advisor sets out obligations in terms of animal welfare and waste management.
- New buildings were constructed in order to meet the farm regulations, comply with EU Good Agricultural Practice for Protection of Waters Regulations 2010 thus preventing pollution.
- Facility to nominate a Local Elected Member to liaise with the planning authority on behalf of the applicant is an important principal in the fairness of the planning system.
- Verbal consent initially given was ultimately withdrawn by the appellant.
- Appellant's assertion that Article 6 of the Planning and Development Regulations 2001-2012 affords him the right to prevent any development within 100m of his house without express consent is incorrect.
- Planning authority were within their rights to adjudicate on the application and arrive at their decision on the consideration of all the facts.
- Development cannot be considered a large scale farm development in any terms and the planning application details and stocking levels and associated storage and housing requirements as prescribed by EU regulations for Good Agricultural Practices. The development is a continuation and modernisation of an established farming practice within a rural location long established prior to any of the surrounding dwellings save the original family home.
- Refute any assertion that the development results in devaluation of adjacent property.
- Issues such as noise, odour and visual amenity have been improved as a result of the development.

- Reject assertion that family member's illness has resulted from the development.
- Landscaping scheme will protect the amenity of the area.

7.2 PLANNING AUTHORITY RESPONSE

7.2.1 The Planning Authority response is summarised as follows:

- Note Variation No 2 of the North Tipperary County Development Plan 2010 which was adopted on 14th December 2014 and replaced the entire written statement. The variation does not contain set standards with regard to separation distances between dwellings and buildings housing animals.
- Class 6 Part 3 of the Planning and Development Regulations 2001 as amended relates to exempted development.
- Application was assessed in accordance with the proper planning and development of the area.
- Environment Section assessed the development and indicated no objection subject to compliance with Department of Agriculture Specifications.
- Dairy farm is a typical rural activity.
- Diagnosis of asthma is considered to be unrelated to the development.
- Subject to the provision of visual screening the planning authority is satisfied that the development as constructed has not unduly impacted on the amenity of the appellant's property.
- Request the Board to uphold the decision of the planning authority.

8.0 ASSESSMENT

8.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the development proposed for retention and completion and all submissions, I consider the key issues raised in the appeal may be considered under the following broad headings:

- The principle of the proposed development.
- The nature of the proposed development and its impact on the environment and amenities of the surrounding area
- Appropriate Assessment.

8.2 Principle of the proposed development.

8.2.1 The proposed development consists of the rationalisation of an existing dairy enterprise and streamlining of an established agricultural use. I consider that the consolidation of the well-established existing agricultural use on the site is an entirely appropriate use in this rural area where the predominant land use is agriculture and therefore the principle of development is acceptable. The third party appellant

asserts that a permission for the development is precluded by the provisions of the Development Plan and also by reference to Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001. I note that the North Tipperary County Development Plan 2010 as varied does not specify a minimum separation distance. As regards the 100 metre separation distance to dwelling condition and limitation this relates to Exempted Development for agricultural structures and is therefore not relevant in terms of the consideration of the current appeal. On this basis I consider that it is appropriate to consider the development on its merit in the context of the proper planning and sustainable development of the area.

8.3 The nature of the proposed development and its impact on the environment and amenities of the surrounding area

8.3.1 The development proposed for retention and completion provides additional slatted shed for livestock housing associated effluent collection tanks extended silage base dungstead and ancillary works. I consider that the justification outlined within the application and appeal that the proposal provides for improvement of existing structures and provides for significant environmental improvement to be reasonable. I conclude that subject to good agricultural practice in accordance with the European Union (Good Agricultural Practices for the protection of Waters) Regulations 2014 and compliance with standard environmental conditions the proposed development will not result in water or other environmental pollution and will be in accordance with the proper planning and sustainable development of the area.

8.3.3 As regards the visual impact of the development the site is an established farmyard which is not unduly prominent in the locality and visual impact of the development is not significant. I consider that additional landscaping as proposed will further mitigate visual impact of the development. As regards impact on the adjacent residential dwelling, I find no evidence to support the assertion that significant impacts on established residential amenity arise as a result of the development nor that the development results in a devaluation of the residential property.

8.4 Appropriate Assessment.

8.4.1 As regards Appropriate Assessment, the site is approximately 5km from the Lough Derg North East Shore SAC (Site Code 002241) and Lough Derg (Shannon) SPA (Site Code 004058) and circa 12km from the Slieve Aughty Mountains SPA (Site Code 004168). Having regard to the nature and scale of the development and to the proximity to the nearest Natura 2000 site, it is considered that appropriate assessment under the Habitats Directive (92\43\EEC) is not relevant in this case 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.

9.0 CONCLUSION AND RECOMMENDATION

- 9.1. I have read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising. I recommend that planning permission to retain and complete the development be granted subject to the following conditions.

RECOMMENDATION

Having regard to the nature and extent of the development to be retained and completed and to the history of on-site agricultural activity, to the existing character and pattern of development in the vicinity, if it is considered that, subject to compliance with the conditions set out below, the proposed development to be retained would not seriously injure the amenities of the area or of property in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be 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 require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. A minimum of 16 weeks storage shall be provided in the underground storage tank. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.

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

3. The slatted shed 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, 2014 (SI No 31 of 2014), 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 slurry.
- (3) Arrangements for the cleansing of the buildings and structures.

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

- 4. 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, 2014 (SI No 31 of 2014).

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

- 5. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of 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 the slatted 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, public health and to ensure a proper standard of development.

- 6. All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the 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.

- 7. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Brid Maxwell
Planning Inspector.
27th May 2016