

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL09.246293

Development: Retention of agricultural development for personal use consisting of entrance, driveway, poly-tunnel, post and wire fence, 2 bee hives, farm building and concrete farm yard.
Russellstown, Kilmeague, Co. Kildare.

Planning Application

Planning Authority: Kildare County Council
Planning Authority Reg. Ref.: 15/1179
Applicant: Kevin Forde
Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant(s): Kevin Forde
Type of Appeal: First Party v Refusal
Observers: Owen Hearty
Date of Site Inspection: 8th June 2016

Inspector: Sarah Moran

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The subject site is located in a rural area north of Newbridge, Co. Kildare, c. 2 km south west of the village of Kilmeague. It is located on a narrow local road that currently serves several one off dwellings. The site is at the end of a ribbon of c. 7 no. houses and there are residential properties on both adjoining sites, to the north and south. Ordinance Survey mapping indicates that the area has poor drainage characteristics. There is a stream running nearby to the south, which skirts part of the southern site boundary.
- 1.2 The site has a total stated area of 0.85 ha. There is an existing vehicular access from the public road with a gravel path within the site. The path serves a series of enclosures and structures along the northern side of the site as follows:
- 3 no. contiguous fenced animal (chicken coop) and crop enclosures;
 - Polytunnel;
 - A 'general farm building', i.e. a shed with a metal roof, and adjoining concrete farmyard, partly enclosed by concrete walls (this appears to be a similar shed, with the original roof removed);
 - 2 no. free standing bee hives at the eastern end of the site.
- The site has an irregular shape and 'wraps around' the adjoining residential property to the northwest, such that the above structures and enclosures are to the immediate rear of the house.

2.0 PROPOSED DEVELOPMENT

- 2.1 Permission is sought to retain the vehicular entrance and the gravel driveway within the site. Permission is also sought to retain the following structures:
- Polytunnel (55.37 sq.m., height 2.45m);
 - 3 no. contiguous animal and crop enclosures with 2.4m high post and wire fencing;
 - 2 no. free standing bee hives
 - A farm building (90 sq.m., 3.85m high)
 - Concrete farmyard (9223 sq.m.), partly enclosed with 2.1m high concrete walls.

The application states that all agricultural structures and enclosures are used for the applicant's personal enjoyment and are not in commercial use.

3.0 PLANNING HISTORY

- 3.1 There have been several previous applications and an enforcement action relating to the subject site.
- 3.2 Permission was granted to Carmel Hearty for a bungalow and associated site works at the subject site under **00/1290**. This permission was never acted upon and has now expired. Kevin Forde (the applicant in the current case)

submitted a series of applications for a dwelling on the site, ref. **04/1502**, **05/2606** and **06/627**. These were all refused, generally on grounds relating to the applicant's non-compliance with County Development Plan rural housing need criteria and rural housing policy. Eileen Keogh then sought permission for a 1.5 storey house at the site under **07/1948**. Permission was again refused on grounds relating to contravention of County Development Plan rural housing policy, exacerbation of ribbon development in the area and haphazard and incongruous suburban pattern of development.

3.3 Kildare County Council enforcement file **UD 6151** relates to the site. Kevin Forde was served with an Enforcement Notice on 7th August 2013 seeking a cessation of works at the site and the removal of structures.

3.4 Under **14/242**, Kevin Forde sought permission for (1) retention and modification of recessed agricultural entrance; (2) retention of service road and (3) retention of 2 no. lean-to agricultural sheds. The planning authority refused permission for the following stated reasons:

1. *Having regard to the scale and nature of the development on site, in particular the scale, bulk and massing of the 2 no. lean to structures, which are located less than 100m from existing dwellings, it is considered that the development to be retained, would contravene policies AG2 and RRD5 of the Kildare County Development Plan 2011-2017 by reason of its obtrusive nature and visual impact. The development thus represents a visually obtrusive and incongruous addition to this area, with consequent negative impacts on the amenity value of property in the vicinity. To permit the development as sought would therefore be contrary to the proper planning and sustainable development of the area.*
2. *Having regard to the limited size of the site and the current use of same, it is considered that the 2 no. lean-to structures, are excessive in scale, are an overdevelopment of the site and would set an undesirable precedent for similar developments in this area, would have a negative impact on residential amenity in the vicinity, which would be contrary to the proper planning and sustainable development of the area.*

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports

4.1.1 Kildare County Council Environment Section 15th February 2016. Requires further information.

4.1.2 Kildare County Council Transportation Department 19th February 2016. No objection subject to conditions.

4.1.3 Irish Water 26th February 2016. No objection. Kildare County Council Water Services 23rd February 2016, notes that site has an existing water connection, no objection subject to conditions.

4.1.4 Kildare County Council Planning Department 28th February 2016. Notes that there has been an intensification of unauthorised activity at the site since the refusal of 14/242. Recommends refusal on grounds relating to contravention of County Development Plan policy on agricultural development, also adverse impacts on residential amenities. Attached Appropriate Assessment screening report concludes that AA is not required.

4.2 Third Party Submissions

4.2.1 The planning authority received one no. third party submission from Owen Hearty, the above named Observer. This objected to the development on grounds similar to those stated in the Observation detailed below.

4.3 Planning Authority Decision

4.3. The PA refused permission for 2 no. reasons. Reason no. 1 is the same as refusal reason no.1 of 14/242. Refusal reason no.2 states:

Having regard to the limited size of the landholding and the current use of same, which includes live animals and to the absence of the applicant's presence on site to provide passive surveillance of the farm holding, it is considered that to permit the development would set an undesirable precedent for similar developments in this area, further exacerbating the impact on existing residential amenity and would therefore be contrary to the proper planning and sustainable development of the area.

5.0 GROUNDS OF FIRST PARTY APPEAL

5.1 The main points made may be summarised as follows:

- The PA opposes a small, low profile farm development in the countryside. It is submitted that most of the agricultural activity at the site would not require planning permission.
- The development involves a personal allotment which contains 2 pigs, c. 20 chickens, 2 small bee hives and an enclosed domestic vegetable patch.
- The structures at the site are low profile and light weight. They have a negligible visual impact and are of a type which could almost be accommodated in a large domestic garden.
- The largest structure at the site is the lean-to shed, 4m high. It is submitted with regard to the exempted development provisions governing agricultural structures in the countryside, that this building is not especially spacious or unduly tall. It would only require permission due to its proximity to residential property as its dimensions comply with the requirements of

Schedule 2 of the Regulations. It is located 84 – 87 m from the residential property, the appellant contests the conclusion of the PA that it is very close to existing dwellings.

- The appeal is accompanied by a copy of a planning report on the proposed development, which was submitted with the original application.

6.0 RESPONSE OF PLANNING AUTHORITY TO FIRST PARTY APPEAL

6.1 The following points are noted:

- The application is the second subsequent application for retention of farm structures at the subject site.
- The applicant has sought and failed several times to secure permission to construct a dwelling at the site. Historic documentation indicates that he is not a farmer or engaged in full time farming. He has developed the site for his personal use. He is not a resident of the area and lives in an urban area within Co. Kildare. Given the planning history, the provision of his own dwelling on the site to accompany the active farmholding is unlikely.
- The development has a significant visual impact on the area, particularly the storage / farm sheds, which are considered to be excessive in scale, bulk and height. There could be potential for further intensification of development at the site in the future, would could lead to further adverse impacts on residential amenity.
- The development would set an undesirable precedent for other such developments on landholdings in the vicinity, given its predominant rural / one off housing character.
- The impact on residential amenity is significant, unplanned and haphazard.
- The use of the site appears to have intensified since the refusal of 14/242, with the introduction of additional poultry, vehicles / trailers, beehives and pigs. The only substantial change to the development refused under 14/252 is the removal of the roof of one of the lean-to sheds. The overall visual impact remains significant.
- The provision of live animals, i.e. poultry and pigs, at the site in the absence of the applicant's full time presence, is of concern.

7.0 OBSERVER SUBMISSION

7.1 The observer lives in the house to the immediate north west of the subject site, overlooking the existing structures and enclosures. He objects to the development on grounds relating to the following:

- The observer is the nearest neighbour to the development and has borne the brunt of the development's ill effects, worsened by lack of planning permission and any regulation of environmental impacts.
- The subject agricultural development is significant and would require planning permission. The applicant has been tardy in submitting applications for retention since the enforcement action of 2014. There has

been a disregard of due process, fairness, existing amenity and ultimately sustainable development.

- The development is essentially a repeat of that submitted under 14/242.
- The applicant's argument regarding exempted development is simplistic and ignores cumulative impacts of the development. Distance from residential properties is only one of the parameters on which exempted development is based, ref. Article 6, Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended. It is submitted that the main farm building alone exceeds exempted development rights on multiple counts. Its overall scale exceeds the parameters specified in the Regulations.
- The development represents an intensive use of a limited site with regard to visual impact, noise, odour and drainage. It would set an undesirable precedent.
- The refusal reasons of 14/242 still apply. The development is well beyond exempted development limits and demonstrates a lack of regard for the amenities of established dwellings in the area by excessive scale and intensity and use of lands that are agricultural and designated as such.
- There is a lack of technical detail regarding sightlines at the vehicular entrance and there is no mention of effluent treatment facilities for the site. It cannot reasonably be held that the development will not pose a risk to public health and road safety.
- It is submitted that the appeal reference to only one third party submission to the application does not infer support for the retention of the development.
- The site is overdeveloped, in an unplanned manner without sufficient supporting infrastructure and its resultant haphazard appearance is contrary to the proper planning and sustainable development of the area. Therefore, a decision to refuse should be upheld.

8.0 KILDARE COUNTY DEVELOPMENT PLAN 2011-2017

8.1 Chapter 10 of the County Development Plan sets out policies on rural development. The following policies are considered relevant in this case:

RRD5 To require new buildings and structures:

- *To be sited as unobtrusively as possible;*
- *To be clustered to form a distinct and unified feature in the landscape;*
- *To utilise suitable materials and colours; and*
- *To utilise native species in screen planting in order to integrate development into the landscape.*

RRD 11: Apart from rural housing as provided for in Chapter 4, there are other landuses which may be considered in the rural countryside. Where an area is not within an identifiable settlement, and is not otherwise zoned as

part of this Plan, or of any of the town development plans, the use of such land shall be deemed to be primarily agricultural.

RRD 13: To ensure that applicants comply with all other normal siting and design considerations including the following:

- *The ability of a site in an unserviced area to accommodate an on-site waste water disposal system in accordance with the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period.*
- *The ability of a site in an unserviced area to accommodate an appropriate on-site surface water management system in accordance with the policies of the Greater Dublin Strategic Drainage Study (2005), in particular those of Sustainable urban Drainage Systems (SuDS).*
- *The need to comply with the requirements of The Planning System and Flood Risk Management Guidelines for Planning Authorities published by the Minister for the Environment, Heritage and Local Government in November 2009.*

8.2 Section 10.5.2 of the plan sets out policy on agriculture. The following policies are considered relevant:

AG 1: To support agricultural development and encourage the continuation of agriculture as a contributory means of maintaining population in the rural area.

AG 2: To encourage the development of environmentally sustainable agricultural practices, to ensure that development does not impinge on the visual amenity of the countryside and that watercourses, wildlife habitats and areas of ecological importance are protected from the threat of pollution.

AG 3: To ensure that all agricultural activities comply with legislation on water quality, such as the Phosphorous Regulations, Water Framework Directive and Nitrates Directive.

AG 6: To support those who live and work in rural areas and who wish to remain on the landholding. Favourable consideration will be given to on-farm based diversification, which is complementary to existing agricultural practices, is operated as part of the farm holding and is intended to supplement existing farm income. Examples of such diversification include:

- *Specialist farming practices e.g. horticulture, equine facilities, poultry, mushroom growing and specialised animal breeding;*
- *Farm enterprises such as processing, co-ops, farm supply stores and agribusiness;*
- *Production of organic and speciality foods to meet the increase in demand for such products; and*
- *Conversion of redundant farm buildings of vernacular importance for appropriate owner-run enterprises, such as agri-tourism.*

8.3 Section 19.8.7 of the plan sets out development standards for agricultural development. It states:

Agricultural developments have the potential for immense impact on the environment and landscape. The traditional form of agricultural buildings is disappearing with the onset of advanced construction methods and wider range of materials. Some new farm buildings have the appearance of industrial

buildings and due to their scale and mass and can have serious visual impacts.

- *In the construction and layout of agricultural buildings, the Council will require that buildings be sited as unobtrusively as possible and that the finishes and colours used, blend the development into its surroundings. The Council accepts the need for agricultural buildings and associated works (walls, fences, gates, entrances, yards etc.) to be functional, but they will be required to be sympathetic to their surroundings in scale, materials and finishes. Buildings should relate to the landscape and not the skyline. Traditionally this was achieved by having the roof darker than the walls;*
- *Appropriate roof colours are dark grey, dark reddish brown or a very dark green. Where cladding is used on the exterior of farm buildings, dark colours (preferably dark green, red or grey) with matt finishes will normally be required. The grouping of agricultural buildings will be encouraged in order to reduce their overall impact in the interests of amenity;*
- *The removal of hedges to accommodate agricultural developments should be a last resort. A landscaping plan is required as part of an application for agricultural development and should include screening and shelterbelt planting, composed principally of native species; and*
- *Other considerations which will arise in such developments will be traffic safety, pollution control, and the satisfactory treatment of effluents, smells and noise. Proper provision for disposal of liquid and solid wastes will have to be made. In addition, the size and form of buildings and the extent to which they can be integrated into the landscape, will be factors which will govern the acceptability or otherwise of such development.*

9.0 LEGAL CONTEXT

9.1 Planning and Development Act, 2000 (as amended)

9.1.1 Section 2(1)

In this Act, except where the context otherwise requires:

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the

production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly.

'allotment' means an area of land comprising not more than 1,000 square metres let or available for letting to and cultivation by one or more than one person who is a member of the local community and lives adjacent or near to the allotment, for the purpose of the production of vegetables or fruit mainly for consumption by the person or a member of his or her family.

"exempted development" has the meaning specified in section 4.

"unauthorised development" means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making or any unauthorised structure) or the making or any unauthorised use.

"unauthorised works" means any works on, in over or under land commenced on or after 1 October 1964, being development other than –

- (a) Exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or*
- (b) Development which is the subject of a permission granted under part IV of the Act of 1963 or under section 34 or 37G of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject.*

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

9.1.2 Section 3

Section 3(1) defines "development" as follows:

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

9.1.4 Section 4

Section 4(1)(a) states that the following shall be exempted development:

development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used

Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this section are the Planning and Development Regulations, 2001.

9.1.5 Section 32

This section has a general obligation to obtain permission in respect of any development of land not being exempted development and in the case of development not authorised for the retention of unauthorised development.

9.2 Planning and Development Regulations 2001 (as amended)

6.2.1 Part 2 and Schedule 2 of the Regulations relate to exempted development.

6.2.2 Article (6)(1) provides circumstances for exemption where it states:

Subject to Article 9, development of a class specified in column 1 Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

6.2.3 Article 9 provides restrictions on exemptions. Article 9(1)(a)(viii) specifies development which would:

Consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

6.2.4 Part 3 of the Second Schedule of the Regulations sets out exempted development – rural. Class 9 of same refers to:

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

Subject to the following limitations in Column 2:

- 1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.*
- 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.*
- 3. No such structure shall be situated within 10 metres of any public road.*

4. *No such structure within 100 metres of any public road shall exceed 8 metres in height.*
5. *No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.*
6. *No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.*

10.0 ASSESSMENT

10.1 The following are the issues considered relevant in this case:

- Legal context and requirement for planning permission;
- Principle of development;
- Impacts on visual and residential amenities;
- Vehicular entrance and site services;
- Drainage and effluent treatment;
- Appropriate Assessment.

These issues may be considered separately as follows.

10.1 Legal Context and Requirement for Planning Permission

10.1.1 The applicant submits that the subject development is an allotment and that much of it would come within the scope of exempted development under current planning legislation. I consider that the development comes within the definition of 'agriculture' rather than that of 'allotment' with regard to the definitions provided in section 2(1) of the Planning and Development Act 2000 (as amended), as set out above, with regard to the following:

- The size of the site at 0.85 ha is >1,000 sq.m
- The area is used for the keeping of pigs and chickens as well as growing vegetables.
- According to the PA, the owner does not live nearby.

10.1.2 I note that section 4(1)(a) of the Act provides that the use of any land for the purpose of agriculture is exempted development. In addition, Class 9 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended) provides that works consisting of the provision of a shed with a gross floor area <300 sq.m. are exempted development. The shed at the subject site is under this threshold at 90 sq.m. However, the exemption is subject to a limitation specified in Column 2 that the structure shall not be situated within 100m of a house. The structure in question is c. 70m from the rear of the adjacent house to the immediate north west of the site (the observer's dwelling). The shed is therefore not exempted development.

10.2 Principle of Development

10.2.1 The site is located in an area where no specific zoning designations apply. I note County Development Plan policy RRD 11, which provides that lands in the rural countryside outside of identified settlements and zoned lands may be deemed primarily agricultural. The subject agricultural development is considered to be acceptable in principle on this basis.

10.3 Impacts on Visual and Residential Amenities

10.3.1 The subject site is not part of an existing farm complex. It is close to several residential properties and is immediately adjacent to the rear garden of the observer. Potential impacts on visual and residential amenities are therefore more critical in these circumstances than would normally be the case in an established farm complex, away from unrelated residential properties. Having inspected the site, I consider that the development does have an adverse impact on the visual and residential amenities of the area, particularly the observer's property, with regard to the following:

- The existing enclosures and sheds are very close to several rear gardens.
- The existing shed has a ridge height of 4m, which is significantly higher than the existing houses in the area.
- The premises is used to keep animals including (as stated by the applicant) 2 pigs and c. 20 chickens.
- I do not consider that the development is in accordance with County Development Plan policy RR5 and the guidance provided for agricultural development in Development Plan section 19.8.7, i.e. designed to be unobtrusive and blend into its surroundings as much as possible.

10.4 Vehicular Entrance and Site Services

10.4.1 The technical report on file by the Transportation Department of Kildare County Council states no objection to the vehicular entrance. I note that the entrance to be retained replaces a previous agricultural entrance at the site. The entrance is considered acceptable given that the development apparently does not generate a significant amount of vehicular movements.

10.4.2 Neither the subject application nor the previous application relating to this site, ref. 14/242, provided detailed proposals for effluent treatment. The development is considered deficient in this respect, particularly since it now involves keeping animals at the site. This is a particular concern given that there is a stream running along part of the southern site boundary and that the site is located in an area denoted in Ordinance Survey mapping as having poor drainage characteristics. There is also the issue of potential cumulative impacts associated with the presence of wastewater treatment systems for the adjacent residential properties, along with possible adverse impacts on any wells / water supplies associated with same.

10.5 Appropriate Assessment

10.5.1 There are no SPAs within 15km of the site. There are 6 no. SACs, i.e.:

SAC	Site Code	Distance to subject site (approx.)
Ballynafagh Bog SAC	000391	3.9 km north east
Pollardstown Fen SAC	000396	4.3 km south
The Long Derries, Edenderry SAC	000925	13.7 km north west
Ballynafagh Lake SAC	01387	5 km north east
River Barrow and River Nore SAC	002162	15 km south west
Mouds Bog SAC	002331	1 km south.

I note that the AA screening report on file concludes that there is no potential for significant effects on the Natura 2000 network. With regard to the nature and scale of the proposed development, the intervening distances and to the lack of hydrological connections, 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 any European site.

10.6 Conclusion

10.6.1 The subject retention proposal is very similar to that already refused retention permission by the PA under 14/242. The applicant does not appear to have made any attempt to overcome the refusal reasons in that case. If anything, according to the documentation on file, the unauthorised development has intensified since the previous refusal. The PA has refused permission for the subject application on the grounds that the development contravenes policies AG2 and RRD5 of the Kildare County Development Plan 2011-2017. Having regard to the above assessment, I concur with this conclusion. I consider that the development has an adverse impact on visual and residential amenities due to its scale and to its proximity to residential properties. In addition, the applicant has not provided adequate details of drainage arrangements and effluent treatment.

11.0 RECOMMENDATION

11.1 In view of the above, it is recommended that permission be refused based on the following reasons and considerations:

REASONS AND CONSIDERATIONS

1. It is considered that, by reason of its nature, scale, height and extent, the development to be retained would be visually obtrusive in this open rural area which is characterised by individual houses. The development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The development to be retained does not include adequate proposals for site drainage and effluent treatment. The development would, therefore, be prejudicial to public health.

Sarah Moran,
Senior Planning Inspector,
13th June 2016