

## An Bord Pleanála



## Inspector's Report

**Reference:** PL93.246313

**P.A. Reference:** 15/761

**Title:** Construct storage building, erect 2.4 metre high palisade fence and ancillary works

**Location:** Ballygagin, Dungarvan, County Waterford.

**Applicant:** Shanley Industrial Engineering Ltd

**Appellants:** Diarmuid O'Neill & Margaret O'Neill

**Observers:** None

**PA:** Waterford County Council

**Type of Appeal:** Third party against grant

**Decision:** Planning permission granted with conditions

**Date of Site Visit:** 15<sup>th</sup> June 2016

**Inspector:** Philip Davis

## 1. Introduction

This appeal is by a local resident against the decision of the planning authority to grant permission for a new industrial building in addition to palisade fencing on a small industrial site in a rural area just outside the town of Dungarvan, County Waterford. The main grounds of appeal relate to amenity issues.

## 2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

### **Ballygagin, County Waterford**

Ballygagin (or sometimes Ballygegan) townland is located within the gently rolling lush countryside just west of the town of Dungarvan in County Waterford. It is approximately 2-km by road from the centre of town. The area is characterised by mid to large sized grazing fields of good quality farmland bounded by high hedges and ditches, served by a network of third class roads without footpaths, mostly radiating out from Dungarvan. There are scattered houses along the third class network, and a small number of commercial operations.

### **The site and environs**

The appeal site, with a site area given as 0.41 hectares, is a roughly rectangular shaped plot of land on the north side of a road running west from the R672 which connects to Dungarvan. It is in commercial use, with a single storey office/light engineering building with in the centre, parking to the front, and a yard to the rear. There is a single access, with a track running along its eastern side which serves both the yard to the rear of the site and lands to the north. The site is part of the larger landholding, which includes a number of fields to the north.

**West** of the site is a large detached dwelling, with another detached dwelling immediately west of this. Beyond this is a stretch of open countryside with a single bungalow about 100 metres further west.

**East** of the appeal site is a substantial light industrial building with a yard and parking around it. Beyond this is open countryside.

**North** of the appeal site, on slightly dropping levels, is a field (part of the applicant's landholding). The track running through the site runs further north through this field to what appears to be a large farming or commercial compound about 150 metres from the site.

**South** of the site is a third class road, with open fields beyond this.

### 3. Proposal

The proposed development is described on the site notice as follows:

*To construct storage building (5.4 metres ridge height over ground level), erect 2.4 metre high steel palisade fence and ancillary works to rear of existing building.*

The application documents indicate that the gross floor space of the existing buildings is 643 m<sup>2</sup>, with the gross floor space of the proposed building at 153 m<sup>2</sup>.

### 4. Technical Reports and other planning file correspondence

#### Planning application

The planning application, with plans and supporting documentation was submitted to the planning authority on the 22<sup>nd</sup> December 2015.

#### Internal and External reports and correspondence.

One objection is on file, from the current appellant.

There are no internal or external consultee records on file.

**Appropriate Assessment:** A Screening report on file concludes that 'significant impacts can be ruled out'.

**Planners report:** A planner's advice note (part of pre-planning consultations) states that the site is in 'Dungarvan Environs' in an area zoned Greenbelt. Industrial use is not permitted in the greenbelt, but the industrial use of the site is permitted. Section 10.57.2 of the Development Plan recognises the desirability to allow minor building extensions and alterations to non-conforming uses in such areas. Table 10.8 of the Plan sets out minimum standards for industrial developments. The planners report on file stated that the design and location of the industrial building is acceptable subject to conditions. Notwithstanding the Green Belt zoning objective, it is considered a relatively minor extension and alteration in line with section 10.57.2 of the Plan. Permission is recommended subject to conditions.

### 5. Decision

The planning authority decided to grant permission subject to 8 no. mostly standard conditions.

## 6. Planning Context

### Planning permissions – appeal site

No records are on file, but the planners report indicates two previous permissions for light industrial units and storage areas on the site – **99/1201** and **01/248**.

### Planning permissions – adjoining areas

None on file, but I note that one of the adjoining houses was granted permission in 2000, **00/528**.

### Development Plan

The site is in an area indicated as ‘Green Belt’ in the Waterford County Development Plan 2011-2017. In such areas, light industrial units are ‘not permitted’. Section 10.57.2 of the Plan allows some leeway for extensions and alterations to existing industrial uses within the Green Belt. Table 10.8 of the Plan sets out quantitative standards for industrial development.

Relevant extracts from the current Waterford County Development Plan are attached in the appendix to this report.

## 7. Grounds of Appeal

- It is argued that the size of the building is excessive in scale, and out of proportion to the claimed use (storage of containers).
- It is noted that it will be just 15 metres from their garden wall.
- It is submitted that it is not, as indicated on the planners report, a ‘minor’ building, but is excessive in height and scale for the area and inappropriate for the Green Belt.
- It is argued that the planning authority landscaping condition is unacceptably vague.
- It is argued that it will have a significant effect on the surrounding landscape in addition to their property.

Photographs are attached, among other items showing the initial unauthorised works to build the structure on the site.

## 8. Applicants response

- It is argued that the applicant did (contrary to what is stated in the appellant’s submission) liaise before an application was made on the design and on landscaping.

- It is argued that the building is the minimum size possible to allow for the loading and unloading of materials, and is as separated as possible from the boundary and only presents a gable to the appellant's house.
- It is noted that it is significantly smaller than the existing building on the site.
- It is claimed that the main building on the site was in use prior to the applicants purchasing the residential property next door.

A number of photographs are attached to the submission, in addition to a copy of a letter from the applicants to the agent.

## 9. Planning Authority's Comments

- The planning authority stated that there was material on the site at the time of the application and that they are satisfied that permitting the shed would allow an improvement of the existing situation, and that a one metre wide planting belt would protect the neighbours amenity.
- In addition, it is stated that the planning authority are of the opinion that there are unauthorised works commencing on the site and that a warning letter will be issued forthwith.

## 10. Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- **Unauthorised development**
- **Principle of development**
- **Residential amenity**
- **Landscape**
- **Traffic safety**
- **Appropriate Assessment and EIS**
- **Other issues**

### **Unauthorised Development**

I note that in their letter to the Board dated 12<sup>th</sup> April 2016 the planning authority stated that a Warning Letter was to be served on the applicant on the basis of works having commenced on the site.

During my site visit I did not observe any evidence that the proposed development has commenced (I note that the applicant previously put in place the frame of a structure which was removed after action by the planning authority on the grounds that it was unauthorised). However,

there was substantial evidence of an increase in works (mostly stored overburden) on a yard at the northern end of the landholding. There is no evidence from the file or other available information that this yard has the benefit of planning permission. This yard is visible on 2005 aerial photos, but not those from 5 years earlier. But the extent of material stored on the site is much more than indicated on available aerial photographs (including one submitted by the applicant), and judging from the appearance, is very recent in origin. I assume it is these works that the planning authority is referring to, although it is possible there is also some confusion regarding the previous unauthorised works on the site (indicated in the appellants photographs), which has now been removed.

It is open to the Board to refuse permission for any works on site on the basis that there are unauthorised works on the landholding. However, from the information on file it is difficult to be certain this is the case at present. On the basis that the works north of the appeal site (if they do require planning permission, and if they are unauthorised) appear to be functionally separate from those for which planning permission is sought, I do not recommend a refusal for this reason. If the Board is minded to refuse for this reason, I would recommend that it seeks confirmation from the planning authority that the works are unauthorised.

### **Principle of Development**

The appeal site is within an area zoned as 'Green Belt' in the Dungarvan Environs zoning plan in the Waterford County Development Plan 2011-2017. Within such areas, heavy and light industry are normally 'not permitted'. This is, however, qualified somewhat in paragraph 10.57.2 of the Plan which allows non-conforming use '*where it conforms to sustainability principles and good planning practice*' and where '*minor*' building extensions and alterations do not prejudice the preservation and improvement of amenities.

I would therefore consider that there is a strong presumption against industrial style developments except where it can be demonstrated that they are minor, do not harm local amenities, and can be seen as allowing sustainable small scale commercial activities in rural areas.

The appeal site is one of two light industrial uses next to each other. The older OS plans show what seems to have been a large house with formal gardens on this site – this is now entirely gone. It is unclear as to when the larger industrial use – an engineering facility to the east of the appeal site was built, but it would seem to have been on the location for several decades. The two industrial uses and the adjoining dwelling are on the 1995 aerial photo of the area, although the first indication on file of planning authorisation for light industrial use is from 1999. The second dwelling was built sometime between 2000 and 2005.

It is unclear from the information submitted as to the precise nature of the light industrial use on the site - it appears to be mainly office and storage relating to an engineering research consultancy. The proposed structure is claimed to be for the storage of materials currently in shipping containers in the rear yard.

I would consider that while the use of this site is clearly non-conforming and is less than ideal in many ways (not least because of the impact on traffic on a quiet country road), it is long established, and having regard to paragraph 10.47.2 of the Plan small scale alterations and extensions to it would be reasonable, but only having regard to strict protection of local amenities and the proviso that it is not facilitating a significant increase in scale of operations.

### **Residential amenity**

Standards for industrial buildings located next to other uses are set out in Table 10.8 of the County Development Plan, which states that a '*minimum setback of industrial building from adjoining land use*' should be 15 metres. The proposed storage building is just over 15 metres from the boundary of the appellant's property and, I estimate, about 25 metres from the corner of the appellants dwelling. I note that the existing building is much closer to the boundary.

The proposed building is a conventional portal frame commercial structure with a ridge height of 5.4 metres. The overall floorspace is 153 m<sup>2</sup>, significantly smaller than the existing building on the site, but still a substantial structure. It is much smaller than the industrial building on the adjoining site to the east. It is north-east of the appellants dwelling so I do not consider that there would be a significant loss of direct or indirect light. It will be a significant structure as viewed from the rear garden of the appellant's garden and I can appreciate that in conjunction with the existing non-conforming uses, they reduce the overall rural amenities as perceived from that dwelling. But on balance, and having regard to the long history of light industrial use of the lands, I consider that the structure would be within the bounds of acceptability having regard to the standards in Table 10.8.

The appellant has argued that the condition for screening between the house and the proposed structure is inadequate. While I appreciate the concerns expressed, I could conclude that a combination of appropriate finishing of materials and a properly constituted planting barrier on the boundary would significantly soften any residual impacts of the proposed development.

### **Landscape**

The site is within a gently rolling topography, with a slight levels drop to the north. The overall landscape is quite enclosed, with lush hedges and copses reducing views from roads and other public areas. The proposed structure would be largely hidden behind existing buildings

from public areas to the south. It would be significantly more visible from the north, where the nearest road is about 500 metres away. But having regard to the context, in particular the larger buildings on the site and to the east, and the high level of tree cover, I do not consider that it would be particularly intrusive in the landscape.

### **Traffic safety**

The yard to the rear of the appeal site is used at present for storage – it would seem from the information on file that the proposed development would not represent a significant intensification of the use of the lands, so I do not consider that it has any traffic implications.

### **Appropriate Assessment and EIS**

The nearest Natura 2000 site is the Dungarvan Harbour SPA, site code 004032. This SPA is designated for its value for a range of birds, all species of wetlands and coastal/tidal areas. The site is within the catchment of watercourses which discharge to the harbour, although there are no watercourses close to the site apart from road drains. The location for the proposed structure is already used for storage and is surfaced with hardcore so I do not consider that there is any potential for alterations to run-off or any other off-site impacts that could have an impact on the relevant habitats or species. I therefore consider that it is reasonable to conclude on the basis of the information on the file, which I would consider adequate in order to issue a screening determination, that the proposed development, either in itself or in combination with other works in the area, would not be likely to have a significant effect on any European Site, and a Stage 2 AA is not therefore required.

As the proposed development does not fall within any category of development within the Fifth Schedule in the 2001 Regulations, as amended, for EIS, and there are no specific environmental sensitivities involved, there is no requirement for EIS.

### **Other issues**

There is no evidence on file that the site or adjoining properties are subject to flooding.

The proposed structure is for storage only ancillary to the main use so I do not consider that it has any implications for water supply or wastewater disposal.

There are no recorded ancient monuments on or adjacent to the site and there are no protected structures in the vicinity (there is a house on the site indicated on older OS plans, but there are no remains of this house visible and no indications on available sources that this house had any specific heritage value).



The proposed development would be subject to a development contribution under the adopted Scheme.

In addition to the industrial structure, palisade fencing is also proposed for three sides of the rear yard. I do not consider that there are any significant planning implications for this fencing.

## **11. Conclusions and Recommendations**

Notwithstanding the stated concerns by the planning authority about possible unauthorised works on the site, I do not consider that there is sufficient information to support a refusal for this reason. The Board may wish to consider requesting the planning authority provide further details and information on any enforcement action it considers appropriate. I conclude that the proposed development would not seriously injure the residential amenities of the adjoining property or of the rural area in general and would be in accordance with the provisions of the County Development Plan.

I recommend therefore, that subject to the conditions set out in the schedule below, planning permission for the structures be granted for the reasons and considerations set out below.

### **REASONS AND CONSIDERATIONS**

Having regard to the clarifications in paragraph 10.57.2 of the Waterford County Development Plan 2011-2017 it is considered that the proposed development, subject to the conditions set out below, would be in accordance with the zoning designation of the area and would not seriously injure the residential or rural amenities of this designated Green Belt area. 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 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 landscaping of the development shall incorporate a continuous hedge of indigenous species (e.g. holly, hawthorn or beech), which shall be planted for the full length of the western and northern boundary.

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

3. No fans, louvres, ducts or other external plant other than those shown on the drawings hereby permitted shall be installed unless authorised by a prior grant of planning permission.

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

4. Receptacles for waste shall be provided and available for use at all times on the premises in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the amenities of the area.

5. Site development and building works shall be carried out only between the hours of 0800 to 1900. Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended.

The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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**Philip Davis,**  
**Inspectorate.**  
**8<sup>th</sup> July 2016**