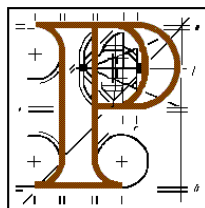


An Bord Pleanála



Inspector's Report

Development: Permission to retain agricultural shed for the storage of farm animals and feeds etc., hay barn for the storage of animal feeds, c) as constructed underground concrete tank.
Permission to complete underground tank for the storage of soiled water from existing agricultural sheds.

Location: Cooleen, Birdhill, Co Tipperary.

Planning Application

Planning Authority: Tipperary County Council.

Planning Authority Reg. Ref.: 16/600025

Applicant: Noel Stokes

Type of Application: Permission.

Planning Authority Decision: Grant Permission with conditions.

Planning Appeal

Appellant(s): Des & Mary O Carroll,
Patrick G Bradley
Margaret Hogan

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 0.47 hectares is located within the rural townland of Cooleen, Birdhill which is approximately 2.5km to the southeast of Birdhill, 2 km southwest of Junction 27 Birdhill and 4km northwest of Newport Town, in north County Tipperary. The area is a unique rural settlement which has evolved around Birdhill National School and Community Hall and the form of settlement is characterised by extensive ribbon type development. The area is not served by way of public sewer. The immediate area has also been significantly influenced by the construction of the M7 motorway within an escarpment a short distance to the south.
- 1.2 The appeal site comprises a dwelling site which is occupied by a single storey dwelling which is sited towards the south-western extremity of the site adjacent to the R504 regional Road and lands forming an elongated cottage plot to the rear of the dwelling. The north-western boundary of the site is defined by a hedgerow adjoining a cul de sac laneway which serves as access to a number of dwellings located to the northeast. Within the rear plot and within 5m of the rear wall of the dwelling is an amalgam of agricultural structures of somewhat haphazard design and which have evidently evolved over time. The overall structure provides for livestock pen and feeding areas as well as storage areas. Part of the structure is in use as domestic store utility area. To the north-eastern end of the plot is a haybarn of 56sq.m. Birdhill National School and Community Hall are located on the opposite side of the regional road R504 respectively to the west of the site.
- 1.3 The dwellinghouse is accessed by vehicular entrance from the regional road whilst there are two vehicular accesses to the site from the laneway to the rear of the dwelling and towards the north-western extremity of the site in the vicinity of the haybarn.

2.0 PROPOSED DEVELOPMENT

- 2.1 The application seeks permission Permission to retain agricultural shed 194m² for the storage of farm animals and feeds etc., hay barn (56sq.m) for the storage of animal feeds, c) as constructed underground concrete tank. Permission to complete underground tank (capacity 66m³) for the storage of soiled water from existing agricultural sheds

3.0 HISTORY

- 3.1 No previous planning applications on the appeal site.
- TUD-14-085 refers to Warning Letter issued in respect of development subject of the current application.

3.2 Adjacent Sites.

- PL92.245903 Application for retention of house effluent treatment system and garage. Application withdrawn.

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 Desmond and Mary O Connell and others objects to the development for proposed retention and completion on the basis that it is breach of the conditions and limitations stipulated in the planning and development regulations, is unduly proximate to residential properties, school and community centre. Concern is expressed regarding potential impact on water supplies negative impact on residential and rural amenity.

5.2 Interdepartmental Reports

- Environment Section report. Asserts that the existing farmyard is substandard and requires a number of specific actions to comply with the Nitrates Directive. 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 9 conditions as follows:

- Condition 1. Permission in accordance with plans and particulars.
- Condition 2. Within 2 months of grant of permission remedial works carried in respect of surface water runoff, removal of cubicles and structure used as a loose house, effluent discharge to effluent tank, low wall to be constructed to prevent seepage/manure escaping from shed. Access for livestock to small yard adjoining domestic store to be prevented by the erection of a suitable fence across the opening of the building. Development in accordance with the requirements of the European Communities (Good Agricultural Practice for Protection of Waters) Regulations.
- Condition 3. Underground tank shall be used only for the storage of soiled water and seepage and under no circumstances shall be used for the storage of farm slurry. Hay barn shall not be used for the housing of livestock save with prior grant of permission.
- Condition 4. 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 5 Uncontaminated surface water to be collected separately from farmyard wastes.
- Condition 6. Monitoring chamber for monitoring of uncontaminated surface / roof water.
- Condition 7. Farmyard wastes to be disposed of by land spreading.
- Condition 8. Transportation of farmyard wastes in a sealed and watertight tanker / container.

- Condition 9. Within three months unpainted metal clad sections of the building shall be painted in a subdued dark grey or dark green.

6.0 GROUNDS OF APPEAL

6.1 The third party appeal is submitted by Des and Mary O Carroll, Coole Birdhill, Patrick G Bradley, Chairman Birdhill School Board and Margaret Hogan, Chairman Birdhill Community Hall. Grounds of appeal are summarised as follows:

- Unauthorised construction of underground tank which is in breach of the regulations being 7.3m from the public road, and less than 100metres from 5 residential buildings who did not consent, less than 100metres from Birdhill N.S. and Birdhill Community Hall.
- Underground tank gives rise to potential health hazard given that it is less than 100m from a domestic water supply.
- Sheds partially constructed in unpainted metal sheeting in breach of planning regulations.
- Report from Environment Section of the local authority is inadequate and incomplete.
- On March 2nd 2016 and on several other dates water was cascading from the premises into a water gully outside the school gate and into the school yard and into the watercourse adjoining the school field.
- No provision for containment measures to accommodate excess water following heavy rain or accidental spillages during tank emptying or discharge activity.
- Watercourse is not identified or acknowledged in environment report.
- No consideration on potential impact on two nearby domestic water supplies in close proximity.
- Negative impact on Birdhill National School and Birdhill Community hall.
- Development poses a threat to the environment.

7.0 RESPONSES

7.1 FIRST PARTY RESPONSE

7.1.1 The response submitted by Brian Grace, Consulting Engineer on behalf of the First Party is summarised follows:

- Applicant is a part time farmer and has a small landholding (approximately 2.24 hectares) adjacent to his dwellinghouse. The holding supports 12 cows and the sheds are used for storing general agricultural feed stuffs and for housing livestock during the winter months.
- The farming regime is of low intensity and there is no slurry tank or slatted shed involved in the operation with a basic bedding straw system on concrete floors used for the cows during wintering.
- Development was carried out by the applicant in a piecemeal manner over several years for the purposes of improving his farming system, to

improve animal welfare and to comply with the current statutory regulations.

- First party seeks to live in harmony with his neighbours and has never received comments or complaints about his farming practice.
- Validity of the appeal is questioned on the basis that a number of signatories of the original objection did not sign the appeal.
- Question the validity of the appeal on the basis that two signatories of the appeal were not signatories of submission to the planning authority within the statutory five week period.
- Planning application was carefully considered by the planning department and detailed consideration of agricultural scientist appointed by Environment Section.
- Neither the Board of Management nor representatives of Birdhill Community Hall signed letters of objection to Tipperary County Council.
- Question of groundwater specifically and comprehensively addressed by the local authority.
- Purpose of the underground tank is to collect and store surface water runoff. This would have the benefit of preventing soiled water from entering the ground water system. The collection of soiled water in a watertight tank within the property can only serve to improve groundwater in the locality. Soiled water will be appropriately land spread in accordance with good agricultural practice.
- As there is an open watercourse between the tank and the two closest domestic wells, any surface water run off would enter the watercourse rather than ever getting in proximity to either well.
- Ground levels in the vicinity of the two wells are higher than appeal site and topography is such that surface water could not flow in the direction of the two wells.
- Note that painting of the sheds has been stipulated under condition 9 of permission.
- Dispute allegations that runoff from site on 2nd March 2016 entered school
- Appeal is vexatious and without any factual or technical merit.
- Proposal will have the benefit of reducing water runoff and improving environmental conditions in the immediate locality.

7.2 PLANNING AUTHORITY RESPONSE

7.2.1 The Planning Authority response is summarised as follows:

- Conditions imposed to restrict the use of the tank and ensure compliance with good agricultural practice.
- Private wells are at a minimum distance of 60 metres from the tank which is satisfactory.
- No evidence is presented demonstrating that there is slurry running off the site into the adjoining public roads.

- Development subject to the conditions as set out is in accordance with the policies and objectives of the North Tipperary County development Plan 2010 as varied and will not result in an undue environmental risk.
- Request the Board to uphold the decision of the planning authority.

7.3 Third Party Appellant's Response to First Party Response to the Appeal.

- Question the ownership of the appeal site.
- Appellant has resided in the vicinity since 1969.
- Legal right to object to planning application should not be called into question.
- Site is located 90m from open watercourse which flows in a westward direction alongside the boundary of Birdhill National School.
- Private Wells have been bored into limestone rock and are over 36 metres deep. As outlined in environment report rock is close to the surface therefore any seepage which could occur could have serious consequences for both private water supplies. Overflow or spillage during emptying or cracks in concrete tank should have serious consequences for the two private well supplies.
- Concerns regarding soakhole close to the tank referenced in report of Environment Section but not shown on plans.
- Comments asserting that the appeal is sensationalist and completely untrue is completely inaccurate and unwarranted.
- Application for retention only made on foot of warning letter.

8.0 ASSESSMENT

8.1 I note that the first party has questioned the validity of the appeal and suggested that it may be viewed as vexatious and without technical merit on the basis that the names of the listed appellants are not those contained in the original objection to the Council and therefore might be dismissed in accordance with Section 138 of the Planning and Development Act 2000 as amended. The issue of validity of the appeal is a matter for the Board to determine. In my view the appeal complies with the requirements for a valid appeal as set out in the Planning and Development Act 2000. The variation in signatories does not present a reason to invalidate the appeal. As regards the matter of ownership of the site as raised in the appellant's response to the first party response to the appeal I note that the issue of ownership is not a matter for the Board to determine. I consider that the appeal should be considered on its planning merit.

8.2 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 and modernisation of an existing small farm enterprise an established agricultural use. I consider that on the basis of the location within a rural agricultural area and having regard to the established use on the site the proposal is acceptable in principle. The third party appellant asserts that a permission for the development is precluded by reference to Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001. As regards the 100 metre separation distance to dwelling condition and limitation this relates to Exempted Development for agricultural structures and therefore is not a specific general limit and does not preclude the provision of such structures subject to an application for permission. On this basis I consider that it is appropriate to consider the development proposed for retention and completion 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 for agricultural shed providing livestock housing as well as storage facilities and underground concrete effluent tank for the storage of seepage and soiled water. It is this element of the proposal which has given rise to the third party appeal and no issues are raised in relation to the haybarn located to the north-eastern extremity of the site. The primary concerns relate to potential for contamination of wells and impact on residential and rural amenity, the local school and community hall arising particularly from potential surface water runoff from the site.

8.3.2 I note that the recommendations of the environment section report indicating that the established structures are substandard and outlining measures to provide for environmental improvement and comply with the Nitrates Regulations. I conclude that subject to these requirements and 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 not unduly prominent in the locality and visual impact of the development is not significant. The retention of the boundary trees and hedging appropriately mitigates visual impact.

8.4 Appropriate Assessment.

8.4.1 As regards Appropriate Assessment, 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, 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 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 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. Within two months of the date of permission the following remedial measures shall be completed on the site:

- (a) Gutters and downpipes shall be erected on the building and discharge pipes for the disposal of uncontaminated surface water run off to a soak away of suitable design separate from the seepage tank,
- (b) Cubicles within the building shall be removed and area shall be operated as a loose house with suitable straw bedding.
- (c) Effluent channels shall be provided within the building with discharge pipes connecting to the underground effluent tank
- (d) A low wall shall be constructed along the north-eastern elevation of the building to prevent seepage /manure escaping from the shed.
- (e) Access for livestock to the yard area adjoining the domestic fuel store shall be prevented by the erection of a suitable fence.

Within one week of completion of the works a detailed report of the works including photographic record shall be submitted to the Planning Authority.

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

3. The livestock shed shall be used only in strict accordance with a management schedule to be submitted to and agreed in writing with the planning authority, within one month of the date of final grant of planning permission. 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.

The effluent tank shall be used for seepage of soiled water only and shall not be used for the storage of slurry.

The hay barn shall not be used for the housing of livestock.

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 storage tank.

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. Existing trees and hedgerows on the site shall be retained.

Reason: In the interest of visual amenity.

Bríd Maxwell
Planning Inspector.
29th June 2016