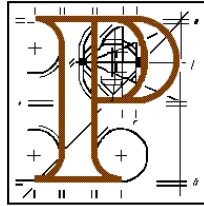

An Bord Pleanála



Inspector's Report

Ref.: PL04.246371

Development: Retention of alterations to cattle house granted under planning reference no. 07/887, permission to vary the terms of condition 1 of planning reference no. 07/887 to allow for building no. 2 on site layout plan to be used for the purpose of calving cows and rearing calves.

Derrynasafagh, Dunmanway, Co. Cork.

PLANNING APPLICATION

Planning Authority: Cork County Council

Planning Authority Ref.: 15/522

Applicant: Denis O'Donovan

Type of Application: Permission for Retention & Permission

Planning Authority Decision: Grant subject to conditions

APPEAL

Type of Appeal: Third Party v. Decision

Appellant: Pamela Hunt

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 29th June, 2016

1.0 SITE LOCATION AND DESCRIPTION

1.1 The proposed development site is located in the rural townland of Derrynasafagh, Co. Cork, approximately 3.0km northwest of Dunmanway, in a primarily rural area which is characterised by intermittent instances of individual dwelling houses and farmsteads. The site itself has a stated site area of 0.122 hectares, is irregularly shaped and presently comprises an active farmyard which includes slatted cattle housing, an open yard area and a store / shed. It is accessed via an existing entrance arrangement onto the adjacent laneway which bounds the farmyard to the immediate south and is bounded by open pasture / agricultural fields to the north and east whilst the adjoining lands to the immediate west are occupied by an existing two-storey dwelling house in the ownership of a third party.

2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 The proposed development consists of the following:

- The retention of alterations to the cattle house previously approved under PA Ref. No. 07/887 which include for a revised building footprint, floor plan and elevational treatment.
- Permission to vary the terms of Condition No. 1 of the grant of permission issued in respect of PA Ref. No. 07/887 in order to allow 'Building No. 2' as identified on the submitted site layout plan to be used for the purpose of calving cows and rearing calves.

3.0 RELEVANT PLANNING HISTORY

3.1 On Site:

PA Ref. No. 07/887. Was granted on 28th June, 2007 permitting Denis O'Donovan permission to construct a cattle house with slatted slurry tank, concrete aprons and associated site works.

3.2 On Adjacent Sites:

PA Ref. No. 997136. Was granted on 21st March, 2000 permitting James & Susan Wilkinson permission for the retention of septic tank & percolation area at Derrynasafagh, Co. Cork.

4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

4.1 Decision:

Following the receipt of a response to a request for further information, on 7th March, 2016 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to a single condition as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

4.2 Objections / Observations:

A single submission was received from the appellant, the contents of which are reiterated in the grounds of appeal.

4.3 Internal Reports:

Area Engineer: No objection subject to conditions.

Environment: States that there is no objection on environmental grounds to the retention of the alterations to the cattle house previously approved under PA Ref. No. 07/887 subject to conditions, however, it is recommended that the proposal to vary Condition No. 1 of PA Ref. No. 07/887 (which would permit 'Building No. 2' to be used for the calving of cows and rearing calves) should be refused permission on the basis that it would be likely to give rise to nuisance to the residents of a nearby third party dwelling house by reason of noise.

4.4 Prescribed Bodies / Other Consultees:

None.

5.0 GROUNDS OF APPEAL

5.1 The grounds of appeal are summarised as follows:

- The previous use of 'Building No. 2' as housing for calving cows and for the subsequent rearing of calves resulted in significant and persistent noise levels which could continue through the night. In this respect the Board is advised that the structure in question was to have been made redundant as part of the development approved under PA Ref. No. 07/887 whereby the newly constructed cattle shed was to have been large enough to accommodate the housing of both calves and cows thereby eliminating the likelihood of noise from livestock caused by separation anxiety.

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- Stalls have been put in place within Building No. 1 thereby extending the calving area to include Building Nos. 1 & 2. In the event of permission being granted to '*vary the terms of condition 1*' it is submitted that the appellants will be subjected to further noise which has already resulted in them having to avoid use of the main bedroom area in their dwelling house.
 - Whilst it is accepted that 'Building No. 2' has historically been used for calving and the rearing of calves, it has since been extended and the main slatted shed moved closer to the appellant's dwelling house thereby resulting in much higher levels of disturbance than were experienced prior to the construction of the new shed in 2007/2008.
 - The noise levels arising from the housing of livestock, particularly during weaning and calving times, in addition to the associated traffic / vehicle movements, during both the day and night, has a negative impact on the appellant's quality of life. The shed in question is simply too close to the neighbouring dwelling house.
 - The Planning Authority has failed to impose any conditions / restrictions in respect of the reduction of noise i.e. the installation of noise fencing, the use of sound-proofing measures, the restriction of hours etc.
 - There are concerns as regards the electrical, fire and structural safety / condition of 'Building No. 2'.
 - The existing shed ('Building No. 2') is located too close to the appellant's property. Furthermore, it is noted that although the dimensions shown on the revised site plan detail the separation between the main dwelling house and the existing shed, it is suggested that this distance should be measured from the appellant's boiler house / shed or the actual boundary line in order to ensure that the appellant has sufficient scope in the future to extend her family's home.
 - The applicant has an alternative shed which is not in such close proximity to the appellant's dwelling house and that could be used for calving purposes.
 - The property boundary shown on the submitted plans is incorrect and the Board is therefore referred to the accompanying copy of the land registry details for the appellant's property (Folio No. CK119923F).
 - With regard to the development proposed for retention, no provision has been made for either calving or the rearing of calves within this structure. Furthermore, given the reduction in the size of the cattle house it is unclear if it will be adequate to accommodate the applicant's herd which could potentially give rise to overcrowding and further noise.

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- Part of the new cattle shed as constructed (and the proposed development site) encroaches into the appellant's property and whilst the area in question comprises waste ground it is not in the ownership of the applicant.
 - The site boundary as shown in PA Ref. No. 99/7136 corresponds with that of the appellant's property.
 - The applicant does not have the consent of the appellants to develop on their property.
 - There are concerns that the proposed planting / hedging will be inadequate to visually screen the proposed development or to attenuate the noise levels emanating from same.
 - The unpainted metal cladding finish of the recently constructed shed is in contravention of the grant of permission issued for PA Ref. No. 07/887 and its industrial appearance is not in keeping with the natural surroundings of the area.
 - The soakaways and private well approved under PA Ref. No. 07/887 have not been constructed and thus there are concerns that these items will similarly not be constructed as part of the subject proposal.

6.0 RESPONSE TO GROUNDS OF APPEAL

6.1 Response of the Planning Authority:

None.

6.2 Response of the Applicant:

- Suckler cows are housed within the existing farmyard and it is considered that the noise generated by this livestock is typical of any suckler unit and could not be described as unbearable.
- 'Building No. 2' has always been used for cattle housing and has not been extended.
- The cattle housing permitted under PA Ref. No. 07/887 was both larger and located in closer proximity to the appellant's dwelling house than the existing structure as constructed (alterations to which are proposed to be retained in the subject application).
- It is not accepted that the existing cattle housing is giving rise to excessive levels of noise. Noise from livestock is typical at feeding times whilst cows can calve at any time which may account for vehicles having to visit the site during both the day and night. The applicant has no control over the times when cows calve and generally the animals need attention at calving times in order to avoid any problem births. There is no more noise

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- from these vehicles than there is from any other road vehicles travelling on the public road near any house in the countryside.
- All the electrical works in the existing buildings have been examined by health and safety personnel and have been certified as safe / compliant. Furthermore, the structural timbers of the structures are in a good state of repair and have withstood storms during the past winter.
 - Contrary to the appellant's claims, there is no alternative shed available to the applicant.
 - The site boundary has been shown correctly on the submitted drawings whereas the property line detailed in Folio No. CK119923F is in error and does not correspond with the situation 'on the ground'. The lands outlined in red and blue as detailed in the application documentation have always been owned and worked by the applicant.
 - The existing cattle house has been designed in accordance with S.I. No. 378 of 2006, E.C. Regulations 2006 (Good Agricultural Practice for Protection of Waters). It is adequately sized for the number of cattle housed as per Teagasc Advice.
 - It is proposed to plant new hedging in order to fill a break in the existing planting along the boundary between the two properties. This will be carried out in the first planting season following completion of the planning process.
 - In an effort to reduce the carbon footprint of the building, instead of purchasing new materials, used side cladding was installed on the building during the course of its construction. The re-use and recycling of construction materials has environmental benefits and serves to reduce global warming.
 - At present, a water supply for the site is obtained from a well on the farm.
 - Surface water will be disposed of by way of soakpits as proposed in the subject application.

7.0 DEVELOPMENT PLAN

Cork County Development Plan, 2014-2020:-

Chapter 6: Economy and Employment:

Section 6.3: Employment Strategy

Table 6.1: Employment Hierarchy: Rural Areas:

- Support agriculture, fishing & food processing sectors.

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- Encourage rural diversification (especially tourism but also on and off farm employment activities such as processing of agricultural produce, manufacturing of crafts and specialist farming) and support innovation in indigenous enterprise.

Section 6.7: *Rural Economy*

Section 6.8: *Agriculture and Farm Diversification*

Objective EE 8-1: Agriculture and Farm Diversification:

Encourage the development of a dynamic and innovative, sustainable agricultural and food production sector by:

- Encouraging the development of sustainable agricultural and infrastructure including farming buildings;
- Prioritising the development of sustainable rural housing to support working farmers and their employees. See Chapter 4 Rural Coastal and Islands;
- Encouraging farm diversification through the development of other sustainable business initiatives appropriate to the rural area; and
- Supporting appropriate proposals for sustainable tourism development. See Chapter 8 Tourism.

Skibbereen Electoral Area Local Area Plan, 2011 (Second Edition, Jan. 2015):

Section 2: *Local Area Strategy*

8.0 ASSESSMENT

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Impact on residential amenity
- Appropriate assessment
- Other issues

These are assessed as follows:

8.1 The Principle of the Proposed Development:

8.1.1 On the basis that the development in question is intended for agricultural purposes, and as the subject site is located within an existing farmyard in a rural area where the predominant land use is agriculture, I am of the opinion that agriculturally-related developments such as that proposed are an inherent part of rural life and should generally be accommodated within such areas. Accordingly, on the basis of the foregoing, and in light of the scale and the intended use of the proposed development for agricultural purposes, I am of the opinion that the development proposed is acceptable in principle at this location.

8.2 Impact on Residential Amenity:

8.2.1 In relation to the concerns expressed in the grounds of appeal as regards the continued operation of the existing farmyard and the alleged detrimental impact of same on the residential amenity of a neighbouring dwelling house, in my opinion, such matters are beyond the remit of this appeal and any issues of non-compliance or complaint should be referred to the Planning Authority or the relevant regulatory authorities for consideration. However, given the nature of the subject application and, in particular, the proposal to 'vary' Condition No. 1 of the grant of permission issued in respect of PA Ref. No. 078/87 in order to allow 'Building No. 2' as identified on the submitted site layout plan to be used for the purpose of housing calving cows and the rearing of calves, it is entirely reasonable to consider whether or not the development as proposed would be likely to give rise to such an intensification of activity on site as to further detract from the level of amenity enjoyed by the residents of the adjacent property. In this regard I am inclined to suggest that the principle source of concern is the overall number of livestock likely to be accommodated on site as a result of the proposed development.

8.2.2 At this point, and by way of background, I would advise the Board that it is evident from a review of the planning history of the application site (i.e. PA Ref. No. 07/887) that the existing farmyard would seem to have previously included 2 No. sheds which were used for the purposes of housing cattle (including calves), however, pursuant to the grant of permission issued under PA Ref. No. 07/887 the larger of these 'original' sheds was demolished and replaced with a new slatted shed (*N.B.* The subject application has sought permission to retain various alterations to this structure) whilst the second smaller cattle house (identified as 'Building No. 2 on the submitted site layout plan) was to have been made redundant. Therefore, as a result of the subsequent implementation of PA Ref. No. 07/887 it is clear that only 1 No. structure on site is presently authorised for the purposes of housing cattle. In this regard I would draw the Board's

attention to Condition No. 6 of PA Ref. No. 07/887 wherein it is stated that the total number of animals to be accommodated in that development is not to exceed 20 No. suckler cows and 20 No. calves (less than 6 months) or their combined equivalent i.e. a theoretical maximum of 40 No. animals on site at any one time (although this may not be the case in practice).

8.2.3 With regard to the overall level of activity likely to be associated with the proposed development and, in particular, the number of livestock to be accommodated on site, the applicant has indicated in response to Question No. 44 of the planning application form that the existing cattle shed (the alterations to which are proposed for retention) will be used to house 20 No. cows and 10 No. calves whereas the proposed use of 'Building No. 2' as cattle housing (by way of 'varying' Condition No. 1 of PA Ref. No. 07/887) is intended to accommodate 2 No. calving cows and 2 No. calves. Therefore, it would appear that the proposed development will cater for a theoretical maximum of only 34 No. animals on site at any one time. This decrease in the overall number of livestock which could potentially be catered for would seem to be attributable to the reduction in the floor area of the 'permitted' existing cattle shed (with its alterations proposed for retention) despite the proposed change in the use of Building No. 2.

8.2.4 Accordingly, on the basis of the foregoing, it is my opinion that the proposed development will not result in any significant intensification of use on site and would instead seem to suggest an overall reduction in the level of activity conducted on site.

8.2.5 In relation to the actual siting of the various cattle housing, it should be noted that Building No. 4 (the existing slatted shed) is located at a greater distance from the appellant's dwelling house than the structure which was previously approved under PA Ref. No. 07/887. Furthermore, whilst Building No. 2 (the proposed cattle shed) was seemingly historically used to house cattle, it is of further relevance to note that this building is located at a marginally greater distance away from the appellant's dwelling house than both the existing slatted shed as constructed on site and that permitted under PA Ref. No. 07/887.

8.2.6 Therefore, having considered the available information, in my opinion, the proposed development (including that element for which permission for retention has been sought) is unlikely to give rise to any additional noise or nuisance impact which could result in a loss of residential amenity to the appellants over and above that associated with the existing farmyard operation.

8.2.7 Concerns have also been raised in the grounds of appeal as regards an alleged infringement of the property boundary and the associated encroachment of the existing construction into adjoining lands held in the ownership of a neighbouring third party who has not consented to same (i.e. the appellant). In this respect the case has been put forward that the proposed development site includes a significant extent of the appellant's property as detailed in the mapping derived from Folio No. CK119923K which has accompanied the grounds of appeal. In response, the applicant has rejected the appellant's assertion and has submitted that the proposed development site is contained wholly within lands retained in his ownership.

8.2.8 In respect of the foregoing, I would advise that it is not the function of the Board to adjudicate on matters pertaining to boundary disputes. Accordingly, any alleged encroachment or interference with the appellant's property is essentially a civil matter for resolution between the parties concerned and in this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'.

8.3 Appropriate Assessment:

8.3.1 Having regard to the nature and scale of the development in question, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.4 Other Issues:

8.4.1: Stocking Rates / Livestock Numbers:

8.4.1.1 Whilst I would acknowledge the appellant's concerns as regards possible overcrowding of livestock, stocking rates and the management of same will be required to comply with the requirements of the Department of Agriculture.

8.4.2 The Protection of Water Quality:

8.4.2.1 The proposed development includes for the change of use of part of an existing shed to use as a loose bedded cattle shed (such structures are commonly used to house calves or animals requiring segregation from the remainder of the herd for reasons such as illness or injury) and such sheds are typically bedded with straw (unlike slatted units) which serves to reduce the potential for runoff or seepage of contaminated material. In this respect the

applicant has stated on the submitted site layout plan that straw bedding will be allowed to build up in the proposed cattle shed over the winter period and that on its removal from the shed in the springtime it will subsequently be stored in a field at an appropriate distance from nearby sensitive receptors. This would seem to suggest that soiled bedding material is proposed to be stored through the provision of a suitable dungstead or equivalent facility at an appropriate location elsewhere within the applicant's landholding. Accordingly, I am satisfied that any waste / effluent arising as a result of the aforementioned element of the proposed development can be satisfactorily addressed by way of condition with the subsequent disposal of same to be subject to the requirements of the relevant Nutrient Management Plan.

8.4.2.2 With regard to the existing slated shed and the alterations to same which are proposed for retention, I am similarly satisfied that any concerns pertaining to the storage of soiled runoff etc. can be addressed by way of condition in the event of a grant of permission.

8.4.3 Structural and Fire Safety Concerns:

8.4.3.1 In reference to the appellants concerns as regards the electrical, fire and structural safety / condition of 'Building No. 2', it is my opinion that such issues are essentially building control matters which are the subject of other regulatory control / legislative provisions and thus are not pertinent to the consideration of the subject appeal, although I note that the applicant has confirmed that all the electrical works in the existing buildings have been examined by health and safety personnel and have been certified as safe / compliant whilst the structural timbers of the structures are also stated to be in a good state of repair.

8.4.4 Visual Impact:

8.4.4.1 With regard to the overall visual appearance of the existing cattle shed and the alterations to same which are proposed for retention, the appellant has objected to the unpainted metal cladding finish of the construction on the basis that it is in contravention of the terms and conditions of PA Ref. No. 07/887 and is not in keeping with the surroundings of the area, however, I would advise the Board that the original grant of permission issued in respect of PA Ref. No. 07/887 simply required the roof and side cladding of the shed in question to be '*coloured to match the existing farm complex*'. In my opinion, whilst the re-use of second hand cladding / corrugated metal sheeting in the existing shed has perhaps given rise to a somewhat weathered appearance, I would suggest that both the structure itself and its external finish are not out of character with the

wider rural area and that it would be feasible to paint the existing cladding if the Board felt that such action was warranted in the event of a grant of permission.

8.4.5 Water Supply and Drainage Services:

8.4.5.1 In relation to the appellant's concerns as regards alleged instances of non-compliance with certain aspects of the conditions attached to the original grant of permission issued for PA Ref. No. 07/887, with specific reference to the provision of surface water soakaways and a private well, and the need to ensure that the applicant complies in full with any grant of permission issued in respect of the subject proposal, it should be noted that the Board has no function in respect of issues pertaining to enforcement and that the pursuit of such matters is generally the responsibility of the Planning Authority.

9.0 RECOMMENDATION

Having regard to the foregoing I recommend that the decision of the Planning Authority be upheld in this instance and that permission for retention and permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

Reasons and Considerations:

Having regard to the location of the proposed development within an established farmyard and to its nature and scale, it is considered that, subject to compliance with the conditions set out below, the proposed development would be an appropriate land use in this rural and agricultural area, would not seriously injure the amenities of the area or of property in the vicinity, and would not give rise to risk of pollution. The proposed development 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 as amended by the further plans and particulars submitted on the 8th day of February, 2016, 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 within three months of the date of this order and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Water supply and drainage arrangements for the site, including the disposal of surface and soiled waters, 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 a storage tank. Drainage details shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order.

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 which shall be submitted to and agreed in writing with the planning authority, within three months of the date of this order. The management schedule shall be in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014, as amended, and shall provide at least for the following:
 - (1) Details of the number and types of animals to be housed.
 - (2) The arrangements for the collection, storage and disposal of slurry.
 - (3) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

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

4. Sufficient straw or other suitable bedding material shall be provided for all animals housed in 'Building No. 2' (as identified in the plans and particulars lodged with the application) to absorb all waste generated. All farmyard manure generated on-site shall be stored and managed in accordance with the requirements of the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2014 (S.I. No. 31 of 2014) and any replacement or further amendment thereof.

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

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

Reason: In the interest of public health.

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

Reason: In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

7. 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, as amended.

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

8. A minimum of 16 weeks storage shall be provided in the underground storage tank. Within three months of the date of this order, 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.

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9. Within three months of the date of this order, all galvanised roofing and cladding shall be painted dark green or other colour as agreed with the planning authority.

Reason: In the interest of visual amenity.

Signed: _____

Robert Speer
Inspectorate

Date: _____