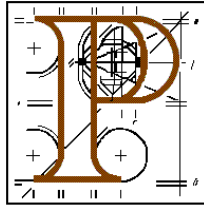


An Bord Pleanála



Inspector's Report

PL05E. 246410

DEVELOPMENT: Retain agricultural structures
ADDRESS: Ballylin, Ramelton, Co. Donegal

PLANNING APPLICATION

Planning Authority: Donegal County Council
Planning Authority Reg. No.: 16/50059
Applicant: Leslie Speer
Application Type: Permission
Planning Authority Decision: Grant permission subject to conditions

APPEAL

Appellants: Terrence and Eileen Foster
Type of Appeal: 3rd party vs. grant
Observers: None
DATE OF SITE INSPECTION: 14th July 2016
INSPECTOR: Stephen J. O'Sullivan

1.0 INTRODUCTION

1.1 This report deals with a third party appeal against a decision of Donegal County Council to grant permission to retain agricultural structures.

2.0 SITE

2.1 The site is in a rural area 5km east of the village of Ramelton and c1km from the shores of Lough Swilly. It is set in a rolling pastoral landscape on a landholding of 20ha. The stated area of the site is 0.778 ha. It is rectangular in shape and contains a slatted shed of c2,700m² that contains a milking parlour, a meal storage shed of 352m², and two silage pits defined by concrete walls that enclose c1,000m² on three sides. A straw storage shed and some older buildings stand on the same farmyard but outside the site boundary. The curtilage of the appellants' house adjoins the yard, c6m from the nearest structure. The appellants' house itself is 31m from the nearest structure on the site. The access to the farmyard is by a lane that runs along the side of the appellants' property. The applicant's house stands to the west of the site, 49m from the nearest structure, and has a separate access from the public road.

3.0 PROPOSAL

3.1 It is proposed to retain the following structures on the site –

- An extension to the authorised slatted shed/milking parlour on its southern side, with a floor area of 1,170m² and a ridge height of 6.4m. The extension for which retention is sought includes one slurry tank of 822m³ and another of 889m³. The drawings indicate that the original and authorised sheds include three slurry tanks with a combined capacity of 1,703m³. So the extended shed has 5 slurry tanks with a total capacity of 3,414m³.
- A rainwater harvesting tank of 130m³ adjoining the eastern side of the slatted shed
- The eastern silage pit of 436m² defined by a mass concrete wall 2.75m high
- The meal storage shed of 352m² and a ridge height of 9.5m

4.0 HISTORY

4.1 Reg. Ref. 06/50110 – the planning authority granted permission on 2nd May 2006 for two slatted sheds on the site. According to the applicant one of those sheds was built before the expiry of the permission. That shed is now encompassed by the extension whose retention is sought in the current application.

4.2 The council planner's report refers to other previous applications on the site –

- Reg. Ref. 04/8069 – Permission granted for a silage pit and effluent holding tank on the site.
- Reg. Ref. 00/7533 – Permission granted for a slatted shed.
- Reg. Ref. 96/1736 – Permission granted for a slatted shed, milking parlour and silage pit.

The applicant submitted a site plan showing the authorised structures in relation to those with which the current application is concerned.

5.0 POLICY

4.1 The Donegal County Development Plan 2012-2018 applies.

5.2 Lough Swilly is designated as an SPA, sitecode 004075, and an SAC, sitecode 002287. The appeal site is c630m from the nearest point of those Natura 2000 sites.

6.0 DECISION

6.1 The planning authority decided to grant permission subject to a single condition regarding surface water management.

7.0 REPORTS TO THE PLANNING AUTHORITY

7.1 submissions – the appellants objected to the development on grounds similar to those raised in the subsequent appeal.

7.2 Roads Engineer – No objection subject to conditions.

7.3 Planner's report – The development is consistent with the authorised landuse. The most significant issue is whether the development would have a significant adverse impact on the residential amenities of nearby houses over and above the permitted operations on the site. The scale of the structures that are subject to this application are considerable, but only the slatted shed would facilitate an intensification of operations as the meal storage shed, silage pit and rainwater tanks are ancillary storage structures. The treatment of animal waste is more appropriately addressed under SI610/2010. The 'statutory distances' raised by the third party are not applicable because this is an application permission. Having regard to the location of the development in an established farmyard, to their greater separation from the objectors' house than the permitted development there, and to the comments of the area engineer, it is considered that the retention of the proposed development would be consistent with the proper planning and sustainable development of the area.

An appropriate assessment is not required as the development as it can be excluded on the basis of objective scientific evidence that the proposed development will not have a significant effect on a European site, either individually or in combination with other projects or plans. A grant of permission was recommended.

8.0 GROUNDS OF APPEAL

8.1 The grounds of appeal can be summarised as follows-

- The development is too close to buildings and would breach the statutory requirements in this regard. It is no more than 6m from the boundary of the appellants' property. The development will give rise to nuisance arising from smells, noise, traffic and an impact on privacy. The appellants have accepted the impact of the previous farmyard and twice yearly slurry spreading, but this unlawful development would noxious fumes and smells at the Fosters' home that would be a nuisance at an unacceptable level. This is an industrial scale of development with a correspondingly greater impact from traffic and odours.
- Works were carried out on the site before and after the application was made. The published description of the development referred only to retention and not to retention and completion, so the application cannot seek permission for the works that were carried out on the site after the application was made. The inspector is obliged to investigate the difference between what is on the site and what was there when the application was made.
- The development is unlawful and cannot be rendered lawful. It would devalue the appellants' property and breach their right to privacy which encompasses a right to private, peaceful and quiet enjoyment of their property. The European Court of Justice has ruled that permission to retain development should only be granted in exceptional circumstances.
- The silage pit is a massive creator of nuisance, smells and danger
- The planning authority's consideration of the appellants' objections was astonishing.
- The developer had many options as to where to locate the development where it would not have effected his neighbours or water safety.

9.0 RESPONSES

9.1 The planning authority's response can be summarised as follows-

- The allegations regarding the conduct of the planning authority are without foundation.. The information available to the planning authority indicates that works did not continue after the making of the application and proper regard was had to the appellants' submission to the authority. Construction activity was not ongoing at the time of inspection by the planning authority.
- The planning authority acknowledges that the structures were constructed unlawfully. The setback distances specified in column 2 of part 3 of schedule 2 of the planning regulations apply to the status of development as exempted or not, as do not apply in the course of an application for permission.
- Matters pertaining to health and safety on working farms are more appropriately dealt with under other legislative codes.
- In the context of the long established agricultural use of the site the development would not have any significant adverse impact on the amenities of neighbouring properties.

9.2 The applicant's response can be summarised as follows-

- The works carried out by the applicant on the weekend of February 26-29 consisted of the routine maintenance of existing lanes used for his farm.
- The farm buildings nearest the appellants' house was built with planning permission. The structures for which retention is sought would not bring development closer to their house. There was a slatted cattle shed and a milking parlour at the farmyard when the appellants bought their house. A further 3 sheds and a silage pit were granted permission under Reg. Ref. 00/7533, 04/8096 and 06/50110. There has not been a massive intensification in activity on the farm. The herd in 2012 was 353 cattle with 176 cows, and is now 373 cattle with 226 cows. Mr Speer has reached the stock grazing limit for his land. The second silage pit is to allow separate storage of first and second cut silage. The meal shed is to allow storage of difference meals in bulk quantity. The development to be retained is to improve productivity on the farm and ensure its longer term viability.
- The appellant has not demonstrated that the development has devalued his property, or that the odours generated are anything other than would be expected from a family run farming enterprise. The traffic that is

generated is normal for this type of farmyard operation, and it has good access to the public road along a short lane with good width and good vision lines. No unauthorised personnel should be entering the farmyard. The applicant takes his responsibility with regard to farm safety seriously.

10.0 ASSESSMENT

- 10.1 The development whose retention is proposed is for agricultural use. It is in a rural area on the site of an established farmyard. These facts support the principle of the development. However the general acceptability of the type and location of the development are not the only factors which determine whether a proposal is in keeping with the proper planning and sustainable development of the area. Its particular characteristics and impacts also need to be considered.
- 10.2 The development is close to the appellants' house and its use would have the potential to effect the latter's residential amenity. The retention of the development would facilitate a greater level of agricultural activity on the farm. However it is not considered that the increase in activity would be likely to cause noise, disturbance and traffic that would seriously injure the residential amenities of the appellants' house to an extent that justify refusing permission or substantially modifying a development that is acceptable in principle. The odours arising from the silage pits would not be likely to cause a nuisance to the neighbouring property. A greater potential for nuisance odours would arise from the slurry tanks serving the slatted shed, particularly when they were agitated or drained. In this regard it should be noted that the tanks and mixing points to which this application refers are located on the western and southern side of the extended shed, away from the appellants' house and closer to the applicant's house. This arrangement means that the development for which permission is sought would not increase the likelihood of nuisance odours at the appellants' house over that which arises from the established and authorised shed whose slurry tank and mixing point are located opposite the appellants' property. The appeal refers to statutory requirements in relation to separation distances. However the planning authority was correct to argue that the distances specified in column 2 of classes 6 and 8 of part 2 of schedule 2 to the planning regulations refer to the status of a development as exempted or otherwise. They are not a determinative factor in applications for planning permission. It is therefore considered that the proposed development would not seriously injure the residential amenities of the appellants' house, nor would it deprive them of their privacy or their right to the peaceful enjoyment of that property.
- 10.3 The management of effluent arising from agricultural activity is governed by specific legislation set out in the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014 (SI no. 31 of 2014). It is not the function of the planning system to replicate or enforce the controls set out in other legislative codes. However it would be prudent to ensure that the

form of a physical development proposed in a planning application was capable of allowing a farm enterprise to comply with the requirements of those regulations. The development to which this application refers contains the effluent storage facilities required for such compliance. The total storage capacity on the farmyard reflects the average stocking rates for the farm set out in the response to the appeal. It is therefore considered that a grant of permission for the development would not be likely to lead to a deterioration in water quality.

- 10.4 The site is on a farmyard that accommodates a commercial enterprise whose operation necessarily gives rise to certain risks to the health and safety of the persons there. However it lies on private land that is properly separated from the public road and adjacent residential properties. For the purposes of planning it must be assumed that the persons that have control or who are present on that property will comply with their obligations under health and safety legislation. There is nothing in the built form of the development which is the subject of this application that would frustrate such compliance. In these circumstances it is not considered that the silage pit or the rest of the development pose a risk to safety that would justify refusing planning permission or requiring modifications to the proposed development.
- 10.5 The site is a considerable distance from the SPA and SAC at Lough Swilly. The development could not have had any direct effect on those Natura 2000 sites. Given its location within an established farmyard, and subject to compliance with the requirements of SI 31/2014 on the protection of water quality, it would not be likely to have any indirect effects on those sites either. Therefore the development would not be likely to have any significant effects on any Natura 2000 site, either individually or in combination with any other plan or project.
- 10.6 The appellants assert that works were ongoing when the application was made so that the published description of the development was inaccurate by not referring to both retention and completion of development, thus rendering the application invalid. The applicant and the planning authority dispute that works pursuant to the development were occurring at the time of the application. I am not in a position to resolve such a dispute of fact. However I would advise the board that there was no inconsistency between the published description of development, the plans and particulars that were submitted in connection with the application and appeal, and the circumstances on the site that I observed at the time of inspection. The planning act explicitly allows for permission to be granted for development that has previously been carried out unlawfully where such development would not require appropriate assessment or environmental impact assessment and where it was in keeping with the proper planning and sustainable development of the area. The development in this application does not require environmental impact assessment or appropriate assessment. In these circumstances I would advise the board that it may consider whether to

refuse or grant the current application for permission on the basis of the proper planning and sustainable development of the area in the normal fashion.

11.0 CONCLUSION

11.1 The development which it is proposed to retain is for agricultural purposes and is therefore appropriate to the location of the site on an established farmyard in a rural area. It would not seriously injure the residential amenities of adjacent property either through odours, noise, traffic or otherwise. Subject to compliance with SI31/2016, it would not threaten water quality nor would it be likely to have a significant effect on any Natura 2000 site, either individually or in combination with any other plan or project. It would not endanger public safety. The published description and the submitted plans and particulars of the development were consistent with the circumstances observed on site and the application is considered to be valid. The retention of the development would therefore be in keeping with the proper planning and sustainable development of the area.

12.0 RECOMMENDATION

12.1 I recommend that permission be granted subject to the conditions set out below.

REASONS AND CONSIDERATIONS

Having regard to the location of the development in a rural area on an established farmyard, and to its nature, scale and arrangement relative to the authorised structures on that farmyard and adjacent houses, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be lead to a deterioration in the quality of waters, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development to be retained shall be 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 within one month of this grant of permission and the development shall be 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 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 a storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

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

3. The slatted shed shall be used only in strict accordance with a management schedule to be submitted to and agreed in writing with the planning authority,. 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 (including the public road, where relevant).

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

4. 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.

5. 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.

6. 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 watercourses.

7. A minimum of 20 weeks storage shall be provided in the underground storage tank. 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.

Stephen J. O'Sullivan
19th July 2016