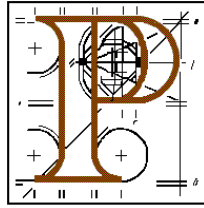


# An Bord Pleanála



## Inspector's Report

### Development

Construction of a slatted shed at Lunnagh, Derrybeg, County Donegal.

### Planning Application

Planning Authority: Donegal County Council

Planning Authority Register Reference: 15/50718

Applicant: Thomas Friel

Type of Application: Permission

Planning Authority Decision: Grant

### Planning Appeal

Appellant(s): Maighreád Nic Ghéidí

Type of Appeal: Third Party

Date of Site Inspection: 28<sup>th</sup> June, 2016

**Inspector:** Kevin Moore

## **1.0 APPLICATION DETAILS**

- 1.1 There is a third party appeal by Maighreád Nic Ghéidí against a decision by Donegal County Council to grant permission to Thomas Friel for the construction of a slatted shed at Lunniagh, Derrybeg, County Donegal.
- 1.2 The development comprises the construction of a slatted shed with a floor area of 227.25 square metres. A covering letter with the application refers to the application being a repeat application for a permission that expired in June 2012 and it is stated that the applicant was unaware of his right to extend the previous permission. It is also stated that the only difference with the previous application is a change in floor level to avoid considerable excavation and to provide proper welfare conditions for the animals. Finally, it is submitted that there are no other suitable lands on which to construct a shed.
- 1.3 Objections to the proposal were received by the planning authority from residents of Upper Lunniagh, Maighreád Nic Ghéidí, Dominic Friel, Bríd Friel, Maire Coll-Rodgers, Róisín McGee, Nuala Coll, Fiona Doyle, Sheila McGee, Ailic and Anna Ó Colla, and residents of Lunniagh Beg. The grounds of objection related to health and amenity impacts, traffic, and impacts on property value
- 1.4 The reports to the planning authority were as follows:

The Planner noted the site's planning history and also noted that the proposal would be located in an established agricultural landholding within an unzoned rural area. It was acknowledged that the proposed shed would be 22m from the nearest house and it was considered that there is scope to relocate the shed within the site. Reference was made to previous An Bord Pleanála decisions for slatted sheds in close proximity

to houses and it was submitted that relocation of the shed to at least 40m from the nearest dwelling would suffice to protect residents. It was noted that a very small landholding had been shown and that there was a need to demonstrate that lands are available for landspreading, particularly as there are extensive lands within Natura 2000 sites in proximity to the site. The grounds of objections received were noted and were commented on. It was further noted that the site is 210m east and 180m north of the Gweedore Bay and Islands SAC and the West Donegal Coast SPA. It was finally noted that the Department of Arts, Heritage and the Gaeltacht had submitted that it had no comment to make on the application. A request for further information was recommended.

The Roads Engineer had no objection to the proposal subject to conditions.

On 16<sup>th</sup> July, 2016, the planning authority sought further information relating to relocation of the proposed shed, the need for the shed, and a nutrient management plan. A response to this requested was received from the applicant on 12<sup>th</sup> January, 2016 which included the relocation of the proposed shed.

- 1.5 The reports to the planning authority following receipt of the further information were as follows:

The Executive Scientist considered the construction of the shed would contain all organic fertilisers generated on the site and would represent a considerable improvement on the current situation.

The Planner recommended that new public notices be sought in light of the new information received.

1.6 New public notices were requested and a copy of same was received by the planning authority on 24<sup>th</sup> February, 2016.

1.7 Further to this, additional letters of objection were received by the planning authority from the residents of the area again raising concerns relating to health and safety, amenity, traffic, and impacts on property values.

1.8 The reports to the planning authority were as follows:

The Planner considered the revised siting of the shed struck a reasonable balance between allowing a continuance of the farming activity on the site and the protection of nearby third party residential amenities. It was submitted that the applicant has a *bona fide* need for the shed. It was stated that landspreading of animal waste is a matter subject to agricultural regulations and is not a material planning consideration. The third party objections were noted and commented on. A grant of permission was recommended.

The Planner's screening of the application concluded that an appropriate assessment of the proposal was not required and the development would not have a significant effect on the Gweedore Bay and Island SAC (Site Code: 001141) and the West Donegal Coast SPA (Site Code: 004150).

1.9 On 16<sup>th</sup> March, 2106, Donegal County Council decided to grant permission for the development subject to 4 no. conditions. It is noted that Condition no. 2 refers to the finished floor level of a domestic garage, which is not part of the proposed development.

## **2.0 SITE DETAILS**

### **2.1 Site Inspection**

I inspected the appeal site on 28<sup>th</sup> June, 2016.

### **2.2 Site Location and Description**

The site of the proposed development is located in a remote rural area in north-west County Donegal. It is accessed via a narrow roadway from Regional Road R257. There is a bungalow and farmyard to the front of the site. Farm buildings, including dry storage and housing for animals, are sited immediately to the rear of the bungalow. There is extensive one-off housing in this area, with houses immediately to the west and south-east of the site.

### **2.3 Donegal County Development Plan 2012-2018**

#### Agriculture

The Plan notes that the traditional activity of farming has an important role to play in the rural economy of the County.

### **2.4 Planning History**

Planning history includes:

P.A. Ref. 07/30322

Permission was granted for the construction of a slatted shed.

P.A. Ref. 14/50734

Permission was refused for the construction of a slatted shed for reasons relating to impact on residential amenity, landscape impact, traffic safety, and flooding.

P.A. Ref. 16/50062

Permission was granted for the retention of an agricultural shed.

### **3.0 THIRD PARTY APPEAL**

3.1 The grounds of the appeal may be synopsised as follows:

Traffic Impact

- The proposed development will generate further agricultural traffic on the local roads and will intensify an already hazardous situation.

Farm Management

- The applicant does not have the requisite facilities in terms of adequate land for grazing and slurry spreading nor adequate housing for his stock, cattle and sheep.
- The applicant has increased his stock before making housing provision and grazes his animals on the SAC and SPA in the area.

### Considerations by the Planning authority

- The planning authority should have assured itself that this farming enterprise, in close proximity to so many dwellings and with grossly inadequate facilities, did not have any negative impact on the environment and or its population.
- The planning authority has not been consistent in dealing with the application given its previous decision and the governing principles remaining the same.

### Planning History

- The history of planning applications for the site (P.A. Ref. 14/50734 detailed in appeal), despite the grant of permission under P.A. 07/30322 which was prior to the provisions of the current County Development Plan, was concerned about the negative impact a development similar to this application would have on the human and natural environment. With no material change in policy and a growing population, the original reasons for refusal are even more pertinent along with the reason that properties in the vicinity would be devalued.

### The Development Plan

- The site is in an area designated 'stronger rural area'. However, it is a densely housed area where residents no longer engage in agriculture and fishing and there is evidence of permissions being granted for multiple housing. Lunniagh is very similar to the Magheraclogher/Bunbeg to Derrybeg area in rural type and there is a move away from the type of rural living associated with farming in the area.

### Natura 2000 Sites

- The risk to the Gweedore Bay and Island SAC and the West Donegal Coast SPA is far too great. The Board is asked to apply the precautionary principle because there are too many things that could go wrong in this farm enterprise.

### Integrating Environmental Policies

- Lunnagh is designated a highly sensitive area. The proposal does not address impacts on humans and the natural environment. It would be remiss to grant permission whilst failing to get consent from others like NPWS and DAFM.

### Economic Enterprise

- In considering the previous application for a similar proposal, the planning authority correctly applied Policies ED P-15 and ED P-16 of the County Development Plan. The reasons for refusal signified the need to protect and respect the receiving environment and its population.

### Appropriate Assessment

- The screening for Appropriate Assessment conducted by the planning authority was deficient. The planning authority failed to take account of other plans and projects associated with the proposed shed, i.e. the plans and proposals for slurry and soiled water disposal. The details supplied by the applicant gave grave concern in respect of the impact on Natura 2000 sites. There is a need to apply the precautionary principle.



### Previous Board Decisions

- The planning authority was over-reliant on other decisions by the Board. It is neither possible nor reasonable to compare the proposal with the others referred to.

The appellant concludes with the reasons why the development should be refused. The appeal is supported by a range of documents including, resident submissions, a letter from a doctor of one of the residents, a copy of a submission by DAHG in relation to the proposal under planning application 14/50734, an auctioneer's valuation reports for the appellant's and a neighbour's dwellings, previous planning decisions, and application details.

## **4.0 APPLICANT'S RESPONSE TO APPEAL**

- 4.1 The applicant first detailed the previous application permitted for a slatted shed under 07/30322, the reasons why an extension of permission was not made, and the differences between the current proposal and that which was previously refused under 14/50734. The applicant's response to the grounds of the appeal may be synthesised as follows:

### Pattern of Development in the Area

- The site lies outside the limits of the Bunbeg-Derrybeg settlement. Agriculture should take place in the countryside and to prioritise ad-hoc residential development at the expense of indigenous agricultural enterprises is not in the interest of proper planning.

### Need for the Proposed Shed

- The sheds referenced by the appellant to the north of the appeal site are subject to enforcement proceedings and the applicant is not party to these. The proposed shed requires considerable investment and the applicant would have taken an alternative route to overcome current farming difficulties if it was available to him.

### Traffic Impact

- Development of the proposed shed will reduce vehicle journeys as the shed is proposed for wintering of cattle.

### Development is Out of Character

- The countryside needs farm activities and farm activity abounds in the general area.

### Site Boundaries

- The discrepancies are a civil matter. The land in question was not to be used in association with the proposed development.

### Devaluation of Properties

- The appellant chose to build her house in very close proximity to a pre-existing farm shed and has accepted the principle of living adjacent to a farm yard. The proposed shed is further from the dwelling, has no effect on views and results in the removal of a dungstead. In relation to Dominic Friel's house, the relocation of the shed represents a distancing from that permitted under 07/30322.

The appellant's valuations appear not to take cognisance of pre-existing sheds.

- The appellant has made no attempt to provide suitable boundary treatment to maximise the privacy of amenities.

#### Poor Farming Practices

- The applicant's farm practices have been inspected regularly and are being monitored closely. The proposed shed is evidence of the applicant's willingness to comply with good practice.

#### Agricultural Activities in Populated Areas

- Planning policy should oppose this argument and should protect and sustain agricultural activity, particularly on lands farmed for generations.
- The local support claimed by the appellant against the development is questioned.

The response includes maps, photographs, a letter from the applicant's agricultural consultant, property valuations, and letters and a petition in support of the development.

## **5.0 APPELLANT'S RESPONSE TO APPLICANT'S RESPONSE**

5.1 The appellant's response reinforced the grounds of appeal to the Board.

## **6.0 PLANNING AUTHORITY'S RESPONSE TO APPEAL**

6.1 The planning authority submitted that the siting of the proposed shed strikes a reasonable balance between allowing a continuance of the farming activity on the site and the protection of nearby third party residential amenities. The Board is otherwise directed to the Planner's recommendations.

## **7.0 SUBMISSION FROM AN TAISCE**

7.1 An Taisce submits that an evaluation is required that demonstrates that all issues have been resolved which determined the site unsuitable previously. The Board is asked to ensure that the proposed development would not give rise to any adverse impacts on the qualifying interests and/or conservation objectives of the Gweedore Bay and Island SAC and the West Donegal Coast SPA.

## **8.0 ASSESSMENT**

### **8.1 Introduction**

8.1.1 I consider the issues of planning relevance to this appeal are:

- The principle of the siting of the proposed development,
- The impact on residential amenity,
- The impact on Natura 2000 sites, and
- Traffic impact.

## 8.2 The Principle of the Siting of the Proposed Development

8.2.1 The proposed development would be sited in a rural area outside of and well beyond any designated settlement in this area. This is a remote rural area, with a most valuable natural environment, that has been significantly altered by one-off houses that have seriously undermined the character of this area and which succeed in eroding those activities best suited to the rural environment, namely agriculture. In my opinion, it would be a most improper conclusion to draw that this is an area where agricultural activities and the curtailment of such enterprise should be discouraged in the interest of promoting this remote, unserviced area as a population centre. The principle of the siting of the proposed slatted shed is sound. The principle of siting such a structure in a rural area within an established farm complex must be accepted.

## 8.3 The Impact on Residential Amenity

8.3.1 I note the profusion of modern and recently constructed one-off houses in and around the environs of the appeal site. The farmyard is well-established at this location and farming activity has been ongoing in this area for a long time before many of these houses were constructed. Many of the occupiers of these houses chose to reside in this location or to build holiday homes here in the knowledge that such practices existed. Indeed, it is notable that the appellant does not refute the claim that she chose to build her house in very close proximity to a pre-existing farm shed. The appellant could have no justifiable grounds against the reasonable and necessary improvements to farm practices at this location, and notably where the proposed development would be further removed from her dwelling than that which exists and where environmental conditions would be improved by appropriate housing for animals and the removal of an

open dungstead. Contrary to the appellant's submission, the proposed development is likely to improve residential amenity. Notwithstanding this, proper planning and sustainable development of this area necessitates the support and prioritisation of farm practices and enterprise in this rural location.

8.3.2 It is my submission to the Board that there are no grounds for determining the proposed development should be refused because it adversely impacts on the amenities of adjoining residents or because it adversely impacts on property values. Residents of the area have chosen to reside in this rural area and agricultural practice and activities are an inherent part of rural living.

#### 8.4 The Impact on Natura 2000 Sites

8.4.1 The site of the proposed development is located outside of any Natura 2000 sites. It lies approximately 120m south of and 250m east of the Gweedore Bay and Islands Special Area of Conservation and the West Donegal Coast Special Protection Area. The former is an extensive coastal site and it has a conservation objective to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected, namely:

- Coastal lagoons [1150]
- Reefs [1170]
- Perennial vegetation of stony banks [1220]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Embryonic shifting dunes [2110]

- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Decalcified fixed dunes with *Empetrum nigrum* [2140]
- Atlantic decalcified fixed dunes (Calluno-Ulicetea) [2150]
- Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*) [2170]
- Humid dune slacks [2190]
- Machairs (\* in Ireland) [21A0]
- Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110]
- European dry heaths [4030]
- Alpine and Boreal heaths [4060]
- *Juniperus communis* formations on heaths or calcareous grasslands [5130]
- *Lutra lutra* (Otter) [1355]
- *Petalophyllum ralfsii* (Petalwort) [1395]
- *Najas flexilis* (Slender Naiad) [1833]

The latter is also an extensive coastal site and it has a conservation objective to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for the SPA, namely:

Fulmar	<i>Fulmarus glacialis</i>
Cormorant	<i>Phalacrocorax</i>

	<i>carbo</i>
Shag	<i>Phalacrocorax</i>
	<i>aristotelis</i>
Peregrine	<i>Falco peregrinus</i>
Herring Gull	<i>Larus argentatus</i>
Kittiwake	<i>Rissa tridactyla</i>
Razorbill	<i>Alca torda</i>
Chough	<i>Pyrrhocorax</i>
	<i>pyrrhocorax</i>

8.4.2 The proposed development would be located in an established farm complex at a location where there is a proliferation of one-off houses with private treatment systems in every direction in the immediate vicinity of this site, i.e. between the site and the Natura 2000 sites. The proposed development comprises a slatted shed, where effluent generated would be contained within the slatted tank which is subsequently landspread in accordance with the requirements of the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations. The only discharge arising for the immediate environment from the shed itself would be surface water that would require management as part of the overall management of the farm complex. The functioning of the farm is, and would continue to be, subject to ongoing monitoring by the Department of Agriculture, while any impacts arising for the SAC and SPA would be subject to monitoring by the Department of the Arts, Heritage and the Gaeltacht.

8.4.3 I note there are inevitably potential consequences of any such development at the construction phase. There are no land drains traversing this site to link discharges from this site to the European Sites in the vicinity. Sound construction management practices should address



any reasonable concerns about the indirect construction impacts of this shed on the European sites.

8.4.4 I note the Planner's report states:

*"This file was referred to the DAHG Wildlife Section. The DAHG has returned a report stating that the DAHG has no comment to make on the application."*

8.4.5 The Board will note that there is no copy of the Department's report on the appeal file. This report has been requested from the planning authority but has not been forthcoming. Notwithstanding this, I note the appellant's submission which includes a copy of the report from the Department of Arts, Heritage and the Gaeltacht for the previous application for a slatted shed under P.A. Ref. 14/50734 and which is dated 25<sup>th</sup> July 2014. A most important observation to make is that the nature and extent of the development proposed was similar to that now before the Board and the Department, in acknowledging the potential impacts for Annex I habitats in the wider area, considered it was adequate to mitigate potential impacts by the attachment of a schedule of conditions set out in its report. It is observed that the conditions relate to the management of the farm yard mainly and it is particularly noted that it was considered adequate to condition landspreading such that it avoids European sites, except where traditionally practiced.

8.4.6 It is my submission to the Board that the proposed development within this farm complex can be reasonably developed without any known indirect impacts arising from the construction and use of this shed for the Natura 2000 sites in the wider environs. I, therefore, submit that it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the

proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Gweedore Bay and Islands Special Area of Conservation and the West Donegal Coast Special Protection Area, or any other European site, in view of the site's Conservation Objectives. A Stage 2 Appropriate Assessment is not required therefore.

## 8.5 Traffic Impact

8.5.1 The proposed development, as a functioning slatted shed, will not have any significant adverse impacts for traffic safety in this rural area. The function this shed will have is to over-winter and house animals. This will result in the removal of the need to over-winter animals on the applicant's lands owned and leased in the wider area and, thus, will result in less vehicular movements on the local road network for certain periods of the farming year. There is no merit in any claim that the proposed development would generate traffic that would cause a traffic hazard. Setting aside this observation, the functioning of the local road network is there to serve the needs of the activities of this area, one primary activity of which is agriculture.

## 9.0 **RECOMMENDATION**

I recommend that permission is granted in accordance with the following:

### **Reasons and Considerations**

Having regard to the nature and extent, location and association of the proposed development within an established farm complex and

landholding, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of its impact on residential amenity, its environmental impact and potential effects on nearby European sites, and would otherwise 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, as amended by the further plans and particulars submitted on the 12<sup>th</sup> January, 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 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 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, prior to commencement of development. 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.

3. 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.

4. 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.

5. 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. Slurry shall not be landspread on dune and *Machair* habitat or within Natura 2000 sites, except in areas that have been previously improved and where the spreading of manure has been traditionally practiced. 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.

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Kevin Moore  
Senior Planning Inspector  
June, 2016