



An  
Bord  
Pleanála

## Inspector's Report PL10.246596

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<b>Development</b>	Straw bed sheep house, concrete apron and associated site works. Ballyspellan, Johnstown via Thurles, Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	16/27
<b>Applicant(s)</b>	Lar Sweeney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Appellant(s)</b>	1. Mai Phelan
<b>Observer(s)</b>	None on file
<b>Date of Site Inspection</b>	25 <sup>th</sup> August, 2016
<b>Inspector</b>	Sarah Moran

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## **1.0 Site Location and Description**

1.1 The site is located in a rural area east of the M8 and c. 2km northeast of Johnstown, Co. Kilkenny. It is accessed via a local road and is c. 1.2 km east of the R639 Urlingford to Durrow regional route. The surroundings are generally rural and agricultural in nature, with a scattering of individual houses and farm complexes. The site is relatively elevated, located at the 160m contour line, with extensive views to the west. Ground levels rise further to the east, where the Spahill and Clomantagh Hill SAC (site code 000849) is located c. 1 km east of the site. There is a national monument in the field to the immediate south of the site, ref. KK008-097 (enclosure). No description is available for the monument and there is no evidence of any structure on the ground.

1.2 The site area is stated as 0.25 ha. There is an existing bungalow on the site, along with associated outbuildings, which are owned and occupied by the applicant. The complex comprises a garage, a sheep shed and a meal store. The stated area of the existing buildings is 67 sq.m. There is a high hedge along the road frontage of the site. The third party appellant has a legal interest in the adjoining property to the immediate east, which shares a boundary with the subject site and is accessed from the same local road. That property comprises a dwelling house, outbuildings and associated lands. There is a sharp bend in the road to the immediate east of the adjacent dwelling.

1.3 See enclosed maps, aerial photographs and site photograph.

## **2.0 Proposed Development**

2.1 Permission is sought for a development comprising:

- Construction of a sheep shed containing sheep pens and bedding areas.

- Construction of concrete apron.
- The total stated area of the development is 141.21 sq.m.
- Development to be served by a private well and soakpit.

2.2 The applicant submitted further information to the PA on 22<sup>nd</sup> March 2016 comprising:

- Details of manure emissions and treatment of same.
- Details of lands in ownership of applicant.
- Response to third party submission.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1 The PA requested further information on 10<sup>th</sup> March 2016 in relation to the following:

- Applicant to clarify whether the development will generate farmyard manure and identify a proposed dungstead / manure pit.
- Applicant to identify full extent of the landholding and to demonstrate sufficient land for the purposes of landspreading soiled waste and / or farmyard manure.
- Applicant to address concerns raised in the third party submission.

3.1.2 The PA granted permission subject to 5 no. conditions on 18<sup>th</sup> April 2016. Conditions nos. 2, 3 and 4 related to the management of storm and waste water generated by the development. Condition no. 5 required external finishes to match the existing farm buildings.

#### **3.2. Planning Authority Reports**

3.2.1 The initial report of the area planner, dated 10<sup>th</sup> March 2016, can be summarised as follows:

- Notes third party submission and report of Environment Department.
- Recommends a further information request in relation to matters raised in the third party submission and Environment Department report.

3.2.2 The second planning report on file dated 15<sup>th</sup> April 2016 notes the further information response and recommends permission subject to conditions.

### 3.3. **Other Technical Reports**

3.3.1 There is a Habitats Directive screening assessment on file. The development is not within 100m of a designated site or likely to discharge pollutants of a significant nature or amount to surface water within catchments of designated sites. No significant effects on Natura 2000 sites are anticipated.

3.3.2 Environment Department report dated 3<sup>rd</sup> March 2016. Requires further information in relation to generation of farmyard manure and storage of same; applicant to identify full extent of landholding with sufficient land for the purpose of landspreading; applicant to respond to third party submission. A second Environment Department report dated 14<sup>th</sup> April 2016 notes the further information submitted and recommends permission subject to conditions.

### 3.4. **Third Party Observations**

3.4.1 The above named appellant made a third party submission to the PA, which objected to the development on grounds similar to those raised in the appeal.

## 4.0 **Planning History**

4.1. There is no relevant planning history for the subject site on file.

## 5.0 **Development Plan**

- 5.1 Chapter 6 of the Plan sets out policy on rural development, section 6.2.4 sets out development management standards for agricultural developments.
- 5.2 Development plan section 8.2 Landscape, Landscape Character Assessment figure 8.2. Designated view no. 14.

## **6.0 Natural Heritage Designations**

- 6.1 The Spahill and Clomantagh Hill Special Area of Conservation SAC (Site Code: 000849) is located c. 1 km east of the site. The SAC is selected for the priority habitat [6210] Orchid-rich Calcareous Grassland\* listed on Annex I of the E.U. Habitats Directive. The Site Synopsis states:

*The site contains a variety of natural grassland communities that are rare in Ireland because of agricultural intensification. Taken with Cullahill Mountain to the north-east it forms a unit of high ecological interest. The presence of a population of Green-winged Orchid in grassland referable to a type listed, with priority status, on Annex I of the E.U. Habitats Directive is notable.*

This area is also designated as the Spahill and Clomantagh Hill proposed Natural Heritage Area (pNHA).

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

- 7.1.1 The appellant has a legal interest in the adjoining property to the immediate east of the subject site. The grounds of appeal can be summarised as follows:

- The development would contravene the Kilkenny County Development Plan 2014-2020, specifically policy in relation to sustainable agricultural practices, ref. paragraph 6.2.1.

- Applicant has not demonstrated any strategic need for the shed to be located at the proposed site.
- Development would not be sustainable as the sheep, forage and feed would be imported from lands at Gathabawn, also waste would be transported to those lands.
- Potential adverse impacts on water quality. Development does not include any effluent storage tank to cater for run off from the straw bedded shed area. The Department of Agriculture and Food minimum specification for wintering facilities for sheep states that the construction of a storage facility for silage / effluent / slurry / soiled water should be located 60m from a public / private water supply. The proposed shed is located within 60m of the private well of the adjoining house and the applicant's own water supply.
- Paragraph 6.2.4 of the development plan requires buildings and structures in visually sensitive areas to be sited as unobtrusively as possible. Proposed building would be visually obtrusive and would injure the amenity of the existing houses. The shed is to the immediate west of the appellant's house and will be in direct line of sight from the house, c. 30m from the front door. Severe injury to the amenities of the appellant's house due to the proximity of the structure.
- The shed and concrete apron would face the appellant's house. The use of the building with a concrete apron, feed passage and access facing the appellant's property would create a nuisance due to noise and odour. The shed would be c. 10m from the boundary shared with the appellant's property, which is a low stone / concrete wall. The development does not include any proposal to screen or reduce the visual impact of the development from the adjoining house.
- Based on the Department of Agriculture and Food minimum specification for wintering facilities for sheep, the proposed shed has capacity to cater for c. 110 ewes. Department guidelines provide for a height of 3m at the eaves of wintering facilities for sheep, while the proposed structure is up to 6m high. The height and

scale of the building are excessive for its stated purpose and will restrict views from the existing dwelling and its forecourt. The shed is to the immediate west of the appellant's dwelling and would restrict evening light to the house.

## **7.2. Planning Authority Response to Appeal**

7.2.1 The PA response states that there is no additional comment.

## **7.3. Applicant Response to Appeal**

7.3.1 The main points made may be summarised as follows:

- The design and location of the proposed development were chosen in consultation with Teagasc and an agricultural consultant.
- It is preferable to have sheep close to the applicant's house during lambing season rather than at the applicant's other lands over 5 miles away. The development is located as far away from the appellant's house as possible within the confines of the site. It is 12.7m from the site boundary and 32.9m from the old dwelling house.
- There is no threat to water quality. The shed would be bedded with straw, as per Department of Agriculture specification. It is downhill of the appellant's well and over 60m from it, also 250m from the applicant's private water supply.
- The shed size and height are designed to accommodate access for plant and machinery for feeding sheep and removing dung.
- The submission is accompanied by a letter by Teagasc Advisor for Kilkenny / Waterford, which makes the following points:
  - This loose sheep shed will be straw bedded with a high rate of straw to absorb all urine and will have feeding points at the front of the shed.
  - Additional to the lying area required for the applicant's ewes (currently 40 ewes plus replacements), several lambing pens will be put in place within



the shed, each of minimum size of 1.5m x 1.5m per pen. Post lambing, the lying areas for ewes with their lambs indoors should be increased from 1.2 sq.m. to 1.8 sq.m. per ewe.

## **8.0 Assessment**

8.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Impacts on Visual Amenities
- Impacts on Water Quality
- Impacts on Residential Amenities
- Appropriate Assessment

These issues may be considered separately as follows.

### **8.2 Impacts on Visual Amenities**

8.2.1 The site is located within an area designated 'A2 Slieveardagh Central Transition zone' in the Landscape Character Assessment provided in county development plan figure 8.2. The uplands nearby to the west are designated 'A Slieveardagh Hills (North & South)'. The development management standards set out in development plan Chapter 8 include the following statement:

*To ensure that development in upland areas or on steep slopes will not have a disproportionate or dominating visual impact (due to excessive bulk, scale or inappropriate siting) and will not significantly interfere or detract from scenic upland vistas, or when viewed from public areas, scenic routes, viewpoints or settlements.*

The subject site has an elevated location relative to lands to the west but is located within a 'transitional' zone as per the Landscape Character Assessment. Given the agricultural nature of the proposed development, its relatively modest scale and its location within a cluster of existing buildings, it is not considered that there would be any significant adverse impact on the wider landscape. I note that development plan protected view no. 14 is located within the Slieveardagh Hills to the north east of the site:

*Views north and east on the Johnstown/Gattabaun Road No. LP1805 between junctions with Road nos. LT18054 and LT18056.*

The subject site does not come within the scope of this view.

8.2.2 Development plan section 6.2.4 provides development management standards for rural developments and states that buildings and structures in visually sensitive areas will be required to:

- be sited as unobtrusively as possible;
- be clustered to form a distinct and unified feature in the landscape;
- utilise suitable materials and colours; and
- utilise native species in screen planting

The proposed development is considered to be generally in accordance with these standards.

8.2.3 Having inspected the site, I am satisfied that the development would have a limited visual impact on its immediate surroundings. It would be screened by the existing high hedge along the road frontage of the site and by the existing house at the site and therefore would be only partially visible from the public road. The appellant's concerns regarding visual impact are noted. However, there are

already several outbuildings and mature vegetation between the house located on the appellant's property and the subject site (see enclosed aerial and ground level photographs). The appellant's house therefore does not enjoy an unobstructed view westwards at present. In addition, the applicant submits that the proposed structure has been located within the site to one side of the existing dwelling, so as to avoid a direct line of site from the appellant's house. This point is accepted. The proposed structure is simple in design and relatively modest in scale with a ridge height of 6m at its highest point. I do not consider that it would have an undue visual impact on the adjacent dwelling such as to warrant a refusal of permission. Conditions requiring landscaping and satisfactory external finishes could be imposed if the Board is minded to grant permission.

### **8.3 Impacts on Water Quality**

8.3.1 According to the documentation on file, the shed would accommodate 40 sheep, including during the lambing season. The application did not include any proposals for effluent treatment and the planning authority sought further information on the matter. Storm water is to drain to a soakaway. Both the applicant's house at the site and the adjacent dwelling of the appellant are served by private wells.

8.3.2 The further information submission and the applicant's response to the appeal are accompanied by letters by Teagasc Advisor for Kilkenny / Waterford, which make the following points:

- The shed would accommodate c. 40 ewes. It would be straw bedded with a high rate of straw to absorb all urine.
- The slurry / manure that accumulate under the ewes would either be spread directly onto the applicant's lands or stored in a suitable clamp in one of his fields during the acceptable time period. Under the Nitrates Directive, the suitable spreading period of in-field storage times are from January 13<sup>th</sup> to October 31<sup>st</sup> each year subject to suitable ground conditions. The applicant has c. 44 ha of land, which is more than sufficient.

The applicant has submitted details of lands in his ownership adjacent to the subject site and nearby at Gathabawn, Co. Kilkenny. These proposals are to the satisfaction of the Environment Department of Kilkenny County Council, ref. report dated 14<sup>th</sup> April 2016 and are considered acceptable. I am satisfied on this basis that, subject to adequate ongoing maintenance and management, the development would not have any significant adverse impact on water quality.

#### **8.4 Impacts on Residential Amenities**

8.4.1 As discussed above, it is considered that there would not be any significant adverse impact on visual amenities. The development would house c. 40 ewes. The applicant wishes to construct the shed at this location close to his dwelling in order to be nearby during lambing season, which is reasonable. It is submitted that the 6m height of the structure is necessary to facilitate access by plant and machinery to collect straw and effluent, this point is accepted. The Teagasc letter on file dated 30<sup>th</sup> May 2016 provides a rationale for the design and internal layout with regard to lambing requirements. The applicant has submitted proposals for the removal of straw and manure and consequent spreading on his nearby agricultural lands. This is normal agricultural practice and the operation involved is relatively small in scale. I do not consider that there would be significant adverse impacts on residential amenities associated with noise or odour. The proposed structure would be c. 32m from the dwelling within the appellant's property. It would be located to the south west of that property and not directly within its line of sight. There are several structures and mature vegetation between the development and the appellant's dwelling. I do not consider that there would be a significant adverse impact by way of overshadowing. To conclude, therefore, it is considered that the development would not have a significant adverse impact on the residential amenities of the appellant's property.

#### **8.5 Appropriate Assessment**

8.5.1 The following Natura 2000 sites are located within 15km of the proposed development:

Natura 2000 site	Site Code	Distance to subject site (approx.)
Spahill and Clomantagh Hill Special Area of Conservation SAC	000849	c. 1 km east. Uphill of the site, apparently no direct hydrological connection.
The Loughans SAC	000407	c. 4 km south
Cullahill Mountain SAC	000831	c. 4 km north east
Galmoy Fen SAC	001858	c. 6 km north west
River Nore SPA	004233	c. 13 km east
River Barrow and River Nore SAC	002162	c. 12.3 km east

I note that the AA screening report on file concludes that there is no potential for significant effects on the Natura 2000 network. With regard to the nature and scale of the development, the intervening distances and to the lack of hydrological connections, 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 any European site.

## 8.6 Conclusion

8.6.1 I am satisfied that the development would not have any significant adverse visual impact on the scenic upland areas to the east of the site, including designated view V14, or on the wider landscape. In addition, I do not consider that it would have an undue visual impact on the adjacent dwelling such as to warrant a refusal of permission. I do not consider that there would be significant adverse impacts on residential amenities as a result of noise, odour or overshadowing. I am satisfied that, subject to adequate ongoing maintenance and management, the development would not have any significant adverse impact on water quality. Accordingly, permission is recommended subject to the conditions set out below.

## 9.0 Recommendation

9.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

## **10.0 REASONS AND CONSIDERATIONS**

10.1 Having regard to the pattern of development in the area and to the scale, nature and design of the proposed structure, 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 and would be in accordance with the proper planning and sustainable development of the area.

## **11.0 CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. 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.

**Reason:** In the interest of environmental protection, public health and to ensure a proper standard of development.

3. 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, 2006.

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

4. Details of the materials, colours and textures of all the external finishes to the proposed building shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In order to allow the planning authority to assess the impact of these matters on the visual amenity of the area before development commences.

5. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- (a) Contoured drawings to scale of not less than [1:500] showing –
  - (i) a survey of all existing trees and hedging plants on the site, their variety, size, age and condition, together with proposals for their conservation or removal
  - (ii) a continuous hedge of indigenous species (e.g. holly, hawthorn, beech or field maple) planted for the full length of the eastern boundary
- (c) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established
- (d) A timescale for implementation.

Deciduous trees shall be planted at not less than 2 m in height and evergreen species at not more than 750mm in height. Species to be used shall not include either *cupressocyparis x leylandii* or *grisellinia*. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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



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Sarah Moran

Senior Planning Inspector

29<sup>th</sup> August, 2016