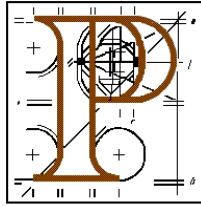


# An Bord Pleanála



## Inspector's Report

**Appeal Reference:** PL05E.246618

**Development:** Retention of silage pit, underground reception tank, feeding shed, farm wetland wastewater treatment system and permission for slatted unit, redevelopment of feeding area and wastewater system at Castletorrison, Knockbrack, Letterkenny, Co. Donegal.

### Planning Application

Planning Authority Donegal County Council  
Planning Authority Reg. Ref. 16/50313  
Applicant: Lawrence McNamee  
Type of Application: Retention permission and permission  
Planning Authority Decision: Grant permission and retention permission

### Planning Appeal

Appellants: John Alexander Smyth  
Type of Appeal: Third Party  
Observer(s): None  
Date of Site Inspection: 29<sup>th</sup> July 2016

**Inspector:** Donal Donnelly

**Appendices:** Photographs and maps

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 The appeal site is located in the townland of Castletorrison in Co. Donegal approximately 8km south-east of Letterkenny and 5.5km west of Raphoe. The site can be accessed via local roads from the N13 to the west or from the R236 at the village of Convoy to the south.
- 1.2 The surrounding area comprises agricultural lands consisting of rolling hills with smaller fields. The site is within the Lagan Valley landscape character area which contains mostly low lying agricultural lands.
- 1.3 The site sits roughly at an elevation of between 100m and 120m OD. The farm complex is accessed via a laneway approximately 250m in length. This laneway commences at a “T” junction with a local road and the appellant’s farmyard is situated around this junction.
- 1.4 The stated area of the site is 1.234 hectares, which includes agricultural buildings and a dwelling house around the farmyard, together with a five cell constructed farm wetland wastewater treatment system situated a distance of approximately 200m further to the south and down-gradient. A pipe and wayleave between the farmyard and wetlands are also included within the site boundary.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 Planning permission is sought for the retention of the following:
  - The existing silage pit with associated concrete aprons;
  - An existing underground reception tank;
  - An existing cubicle and feeding shed;
  - An existing farm wetland wastewater treatment system.
- 2.2 Planning permission is sought for the development of the following:
  - Construction of an agricultural slatted unit building;
  - Redevelopment of the existing cubicle and feeding area (mentioned in the retention) into a machinery storage area; and
  - Carrying out adjustment work to the existing farm wetland wastewater treatment system (mentioned in the retention) and all associated site development works.

### **3.0 TECHNICAL REPORTS**

- 3.1 The recommendation to grant permission/ retention permission, as outlined within the Planning Report, reflects the decision issued by the Planning Authority.
- 3.2 The Case Planner sets out responses to each of the issues raised by the third party objectors.
- 3.3 Within respect to site notices, it is considered that the notification procedures have been adequate to alert the correspondent. Other matters of right of way and distances from boundaries are stated to be sufficient and in compliance with Regulations.
- 3.4 It is stated that the nearest third party lands downhill from the underground reception tank are at some distance and the absence of fencing is not a material planning consideration. In terms of impact on amenity, it is stated that the principle of such development in a rural area and within an established agricultural holding is perfectly acceptable. There are no overriding traffic concerns and any structural risk to third party buildings is unsubstantiated. In terms of scale, the Case Planner notes that buildings of this scale are not extraordinary in Co. Donegal.
- 3.5 The EHO is satisfied in relation to the proposals for the wetlands subject to satisfactory completion of re-construction works.
- 3.6 Issues raised by the objector relating to the construction process, right of way, ownership, contamination, pollution and environmental concerns, construction techniques/ standards, are considered to be either civil matters or matters for other codes.
- 3.7 Finally, the Case Planner considers that it is reasonable to retain an historic tree on site and this can be addressed by way of condition.
- 3.8 It is concluded that the proposed development is entirely typical of agricultural development in Donegal and that the planning application is generally compliant with the requirements of the Planning and Development Regulations, 2001 (as amended). The Case Planner is satisfied that the issues raised by third parties are not of sufficient substance to warrant refusal of permission.

### **4.0 PLANNING AUTHORITY'S DECISION**

- 4.1 Donegal County Council issued a notification of decision to grant permission and retention permission for the proposed development/ development.
- 4.2 A single condition was attached to the retention permission stating that the proposed 'pond and cell reconstruction works' as set out in the submitted

Constructed Wetlands Design Report shall be completed within 8 weeks of the final grant of permission.

- 4.3 Similarly, a condition was attached to the grant of permission stating that the 'pond and cell reconstruction works' shall be completed prior to first use of any structures permitted.

## 5.0 APPEAL GROUNDS

- 5.1 A third party appeal against the Council's decision was submitted by John Alexander Smyth who owns lands adjacent to the appeal site. The grounds of appeal and main points raised in this submission can be summarised as follows:

### Retention of existing silage pit with concrete aprons

- Planning and Development Regulations were not complied with as site notices were not erected at all entrances to the holding or were not visible from the road.
- Site layout plan does not specify the two wayleaves in the curtailment of the site or the correct land boundary.
- Applicant failed to note on plans the distance from the boundary of the existing feeding, cubicle shed, concrete apron, (Section 23 (f) of the Act).
- Appellant considers that there was not a 100g film layer put down and there was no allowance for the depth of gullies as specified when constructing the silage pit with associated concrete aprons.
- Realignment of farm access road to north-east of silage pit and other access road across the entrance into the farmyard do not have provision for surface water drainage – this will lead to significant discharge of surface water onto appellant's land.
- Silage pit is within 45m of the source of appellant's farm and home well – this poses a significant risk to appellant's water supply. Silage pit does not comply with the Department of Agriculture and Food's Minimum Specifications for Concrete Silage Bases S128 Part 3 and contravenes the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014.
- Concrete silage base is less than the 150mm specified by the applicant – this leads to the potential for groundwater contamination. There is also a crack in the concrete apron at the front of the silage pit.
- Plans do not show if a polythene membrane was laid prior to pouring of the floor slab of the pit.

- There is no drainage on the outer edge of the silage apron to the front and this apron comes up to within 750mm of appellant's boundary.
- Silage effluent has a very high polluting potential and this should be taken into consideration when making a decision on this application.
- Silage pit has restricted appellant's right of way onto his lane and has removed part of a hedge and ditch that was on his property.

Retention of existing underground reception tank

- Reception tank is within 1.5m of appellant's boundary and this does not provide for a safe buffer in the case of overflows and blockages.
- There is no specification on the plans as to the size or location of outlet and inlet pipes.
- Polythene membrane would be required to be laid prior to installation of this tank.

Retention of the existing cubicle and feeding shed

- Building should have been set back from the boundary by 1m to provide for maintenance.
- Hole in the wall of the cubicle and feeding shed caused contamination and pollution within applicant's land.

Permission to retain an existing farm wetland wastewater treatment system

- Wastewater treatment system as proposed poses a significant risk to appellant's livestock and health and wellbeing of any persons in the area.
- Applicant's field has become wet and waterlogged and to permit development would cause adjoining field to become unusable.
- Piping system down to the wetlands is inadequate.
- System has never been effective and would not be adequate to remove soluble chemicals, oils, acids or milks from water.

Permission to construct an agricultural slatted unit building

- Department of Agriculture and Food document S.123 states that "sites on made up ground, i.e. filled ground, or where differential settlement is likely to occur leading to structural crack, shall be avoided."
- Slatted unit will greatly take away from the amenities of the area.
- Total effluent storage capacity will be in excess of the nitrates directive.

- There is no provision at the edge of the feeding passage area on front of the proposed development to drain away effluent contained in feed material.
- New tank would be 5.5m from boundary with appellant's land and would pose a risk to land and groundwater.
- It is not accepted that there would be no more traffic associated with this development.
- Slurry gases are likely to pollute the air around the appellant's area and cause a potential risk to persons and livestock.

Permission for redevelopment of existing cubicle and feeding area into machinery storage area

- Proposed redevelopment is in same location as retention – appellant does not permit access onto his land to carry out any works.
- Proposed development is a significantly larger construction and would not be in keeping with the amenities of the area.
- Building would not be appropriate for machinery storage – reinforced concrete walls would be required.

Carrying out adjustment work to the existing farm wetland and wastewater treatment system

- Proposed adjustments would do nothing to alleviate the issued raises above.
- Existing system should be relocated away from appellant's land to allow for an appropriate safety zone.

## 6.0 RESPONSES

First party

- 6.1 The applicant's agent stated in response to the third party appeal that the objection to the grant of permission is made without substance. It is considered that the appellant has failed to provide any factual supporting documentation. The applicant and agent are of the opinion that the appeal should be rejected in full and that the Board should concur with the Planning Authority's decision.

Second party

- 6.2 In response to the third party appeal, the Planning Authority states that it is satisfied with the contents of the Planner's Report and Recommendation and requests that the Board uphold the decision.

## **7.0 PLANNING HISTORY**

7.1 No planning history.

## **8.0 DEVELOPMENT PLAN**

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

8.1 The appeal site is located within a “*stronger rural area*”. These are described as stable areas supported by a traditionally strong agricultural economic base.

8.2 It is recognised in the Development Plan that most farming and forestry activities are outside the scope of planning control.

## **9.0 ASSESSMENT**

9.1 Planning permission is sought for the retention of an agricultural development and wetland wastewater treatment system at an existing farm complex in rural Co. Donegal. Planning permission is also sought for new agricultural structures and for amendments to the wetlands wastewater treatment system.

9.2 Donegal County Council issued notification of decision to grant permission and retention permission for the development and a third party appeal has been lodge by an adjoining landowner.

9.3 Having considered the contents of the planning application, grounds of appeal and the site context, I consider that this appeal should be assessed under the following:

- Development principle;
- Validation;
- Wastewater treatment and disposal;
- Impact on the amenities of the area;
- Other.

### *Development principle*

9.4 The proposal for the retention and extension of an existing agricultural development within a rural area is acceptable in principle subject to an assessment of the impact of the proposal on its surroundings.

9.5 There is a long established and authorised farm complex at this location. The proposal to retain 364.25 sq.m. of development comprising a silage pit adjoining two existing silage pits; an associated underground reception tank; and a cubicle shed adjoining an existing slatted unit is consistent with the

established pattern of development in the area. Furthermore, the proposed slatted unit will be located to the rear and adjoining the existing cluster of buildings.

- 9.6 There are no specific policies within the Development Plan concerning new agricultural buildings; however, the subject site is remote from any settlement boundary and an incremental addition to an existing farm complex would not be seen as having an adverse impact on the countryside.
- 9.7 It is also worth noting that Section 4(1)(a) of the Planning and Development Act, 2000 (as amended) exempts development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used. In addition, Classes 6 to 10 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), sets of the type agricultural structures that are exempted development. The Development Plan also recognises that most farming and forestry activities are outside the scope of planning control.
- 9.8 Whilst the development in question exceeds the conditions and limitations in terms of area set out in the Regulations, the proposal is not of an excessive scale that would be considered out of place in a rural area. Furthermore, the applicant has put in place ancillary provision for effluent treatment and disposal via the wetlands wastewater treatment system. Overall, I would have no issue with the scale, location and principle of the development and associated wetlands wastewater treatment system.

#### Validation

- 9.9 The appellant submits that the planning application failed to comply with the requirements of the Planning and Development Regulations with respect to validation. It is considered that site notices were not erected at all entrances or were not visible from the public road. The appellant also had issue with wayleaves and distances of structures from boundaries as shown on planning application drawings.
- 9.10 I would be in agreement with the Planning Authority that the planning application is generally compliant with the requirements of the Regulations. The applicant would appear to have given adequate public notification of the application and a key right-of-way pertaining to the application has been identified on the site location map. Furthermore, the location of the structure is already evident from its position on the ground. I would therefore be satisfied that the Planning Authority was correct to validate the planning application.

#### Wastewater treatment and disposal

- 9.11 The planning application seeks retention of an as-constructed farm wetland wastewater treatment system and for adjustment work to the system. The existing system has been in place for approximately 10 years and planting is now well established.



- 9.12 The wetlands treatment system consists of five stages comprising an initial settlement pond, three wetland cells and a final settlement pond. The applicant has engaged the services of an expert in reed bed and wetland wastewater treatment system construction to assess the effectiveness of the existing system and to recommend any changes to improve treatment and to accommodate any additional loading.
- 9.13 Effluent samples were taken and it was found that the existing system achieves an adequate level of treatment. However, it is proposed to reconstruct areas to achieve maximum potential in terms of treatment. Excavation works are proposed to cell 1 and level bases will be created within the wetland cells to allow effluent to flow evenly across the width of each cell. Planting is proposed within the second wetlands cell. It is considered that the final cell is not essential but will be left available to be converted, if necessary, to an additional wetlands treatment cell. It is stated that once the system has reached full maturity, effluent will be treated to an exceptional standard.
- 9.14 I would be satisfied that the proposed works will improve the operation of the wetlands system and quality of discharge to the nearby stream. The adjusted system would appear to be designed in accordance with the design recommendations for integrated constructed wetlands as contained in the Integrated Constructed Wetlands Guidance Document for Farmyard Soiled Water and Domestic Wastewater Applications. Minimum separation distances to the nearest potable water, ditches/ streams and dwellings also appear to have been achieved.
- 9.15 Finally, it is noteworthy that the applicant is seeking retention and improvements to a wetlands system that is in place longer than the 7 year period for which enforcement action can be taken.

*Impact on amenities of the area*

- 9.16 Issues raised by the appellant regarding impact on the amenities of the area include the visual appearance of the development and the potential for increased traffic movements.
- 9.17 As noted above, permission is sought for retention and extension works to an established farm complex. There is an existing cluster of agricultural buildings at this location and when viewed from the wider area, the proposed development/ development to be retained will appear as an incremental addition.
- 9.18 Any additional traffic associated with the proposed development/ development to be retained will, in my opinion, be minimal and I would be of the view that the surrounding road network is capable of accommodating the volume and nature of traffic movements that would be generated by the development.

### Other

- 9.19 The appellant has raised a number of other issues which were considered by the Planning Authority to be civil matters or matters that fall under the control of other codes.
- 9.20 I would be in agreement that issues affecting land ownership and rights of way are civil matters. Furthermore, the construction and use of agricultural buildings must comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 (SI No. 610 of 2010).
- 9.21 Notwithstanding the above, I recommend the attachment of a condition to any grant of permission requiring the applicant to submit a management schedule for the proposed slatted unit that complies with these Regulations.

### Appropriate Assessment

- 9.22 Having regard to the nature and scale of the proposed development and/or nature of the receiving environment and/or proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **RECOMMENDATION**

Having considered the contents of the application and the provisions of the Development Plan, together with the grounds of appeal and my assessment of the planning issues, I recommend that retention permission/ permission be granted for the development based on the reasons and considerations hereunder and subject to the conditions set out below.

## **REASONS AND CONSIDERATIONS**

Having regard to the existing agricultural use of the site and the pattern of development in the area, subject to compliance with conditions below, the development will not seriously injure the visual or residential amenities of the area. 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 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority,

these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

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

2. Within 8 weeks of the date of this order, the proposed “pond and cell reconstruction works” as set out in the submitted “Constructed Wetlands Design Report” submitted to the Planning Authority on 9<sup>th</sup> March 2016 shall be completed and written confirmation of same by the author of said report shall be submitted to the Planning Authority.

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

3. The proposed 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, prior to commencement of development. The management schedule shall be in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2010 (SI no. 610 of 2010), and shall provide at least for the following:

- (a) Details of the number and types of animals to be housed.
- (b) The arrangements for the collection, storage and disposal of slurry.
- (c) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

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

4. Where slurry generated by the proposed development is to be disposed of by spreading on land, 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, 2010 (SI no. 610 of 2010).

**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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**Donal Donnelly**  
**Inspector**

22<sup>nd</sup> August 2016