



An
Bord
Pleanála

Inspector's Report PL07. 246677

Development	Construction of loose housing shed with slatted tank and manure pit to include a concrete apron and all associated site works.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	15/1574
Applicant(s)	Jarlath & Patrick Gormally
Type of Application	Appeal – 1 st v refusal
Planning Authority Decision	Refuse permission
Appellant(s)	Jarlath & Patrick Gormally
Observer(s)	None
Date of Site Inspection	23 rd September 2016
Inspector	Karla Mc Bride

1.0 Site Location and Description

The appeal site is located within a rural area in County Galway to the E of Tuam and approximately 5km to the SW of Kilkerrin and 5km to the NW of Moylough. The site is located within an existing low lying farm complex which comprises several sheds and the proposed development would be located in the N section of the yard. The site would be bound to the N by agricultural fields which contain a network of small streams that flow S to a stream along the S site boundary with the local road. This stream ultimately drains into a river that forms part of the Lough Corrib SAC to the W whilst the Derrynagran Bog NHA is located to the S of the site on the opposite side of the local road. There are two houses located to the W and S of the complex.

The attached maps and photographs describe the site in some detail.

2.0 Proposed Development

Planning permission is being sought to construct a loose housing shed with slatted tank, manure pit and concrete apron.

- The slatted shed (c.514sq.m) would be c.15m wide, 24m long and 7m high and the concrete apron (c.51sq.m.) would be 9.1m long.
- The slatted area would be c.18m wide, 4.5m long and 2.4m deep and the manure pit (c.52sq.m) would be c.6.1m wide and 8.5m long.
- All associated site works.

Accompanying reports

A Flood Plain Report & an AA Screening report were submitted by way of FI

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of FI in relation to the submission of a Flood Risk Assessment report and a Screening for Appropriate Assessment report, the PA decided to refuse planning permission for 2 reasons related to:

- Located within a fluvial flood risk area, no hydrological impact assessment submitted, contrary to Objective FL1 and undesirable precedent.
- Negative effect on the integrity and conservation objectives of the Lough Corrib SAC and SPA which is ecologically linked to the site by way of the fluvial flood risk area; and material contravention of policies, objectives and development management standards (Policy NHB1, Objectives NHB1,2 & 3, and DM Standard 40).

This decision reflects the report and recommendation of the County Planning Officer.

No interdepartmental reports.

3.2. Other Technical Reports

No other reports attached.

3.3. Third Party Observations

No submissions received.

4.0 Planning History

Reg. Ref. 06/0910: Permission granted to construct a slatted shed (c.156sq.m.) and loose housing shed to include a concrete apron and all associated site works.

Reg. Ref. 03/0186: Permission granted to construct a slatted shed with storage tank and loose housing area and to resurface existing silage slab

Reg. Ref. 97/0023: Permission granted to construct a slatted dairy isolation box.

5.0 Policy Context

EU Habitats Directive (92/43/EEC)

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

The Planning System and Flood Risk Management - Guidelines for PAs 2009

These guidelines require the planning system at national, regional and local levels to avoid development in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere; adopt a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk; and incorporate flood risk assessment of planning applications and planning appeals.

Preliminary Flood Risk Assessment – OPW Maps 2011

The OPW produced flood maps as part of the Preliminary Flood Risk Assessment (PFRA) that identify areas at risk of flooding, including fluvial, coastal, pluvial and groundwater flooding, for the entire country.

6.0 Development Plan

The site is located within a rural area covered by the Galway County Development Plan 2015-2021 and the following policies, objectives and standards apply.

Landscape classification: Site located within a Class 1 Low sensitivity landscape.

Flood risk: The site is located within Flood Risk Area (Fluvial 100) as per the Stage 1 Strategic Flood Risk Assessment for County Galway.

Nature conservation: The site is not located within an SAC or SPA although Lough Corrib SAC is located to the W & Derrynagran Bog NHA is located to the S.

Objective FL1 (Flood Risk Management and Assessment) seeks to comply with the requirements of the Flood Risk Management-Guidelines and Technical Appendices Document 2009. This will include the following:

- a. Avoid, reduce and/or mitigate, as appropriate in accordance with Guidelines.
- b. Development proposals in areas where there is an identified or potential risk of flooding or that could give rise to a risk of flooding elsewhere will be required to carry out a Site-Specific Flood Risk Assessment, and justification test where appropriate, in accordance with the provisions of 2009 Guidelines.
- c. Development that would be subject to an inappropriate flood risk or that would cause/exacerbate a risk at other locations shall not normally be permitted.

Galway County Council shall work with other bodies and organisations, as appropriate, to help protect critical infrastructure, including water and wastewater, within the County, from risk of flooding.

Policy NHB1 (Natural Heritage and Biodiversity) seeks to support the protection, conservation and enhancement of natural heritage and biodiversity, including the protection of the integrity of European sites and the protection of Natural Heritage Areas, and other designated sites including any future designations.

Objective NHB1 (Protected Habitats and Species) seeks to support the protection of habitats and species listed in the Annexes to and/or covered by the *EU Habitats Directive (92/43/EEC) (as amended)* and the *Birds Directive (2009/147/EC)*, and regularly occurring-migratory birds and their habitats and species protected under the *Wildlife Acts 1976-2000* and the *Flora Protection Order*.

Objective NHB2 (Biodiversity and Ecological Networks) seeks to support the protection and enhancement of biodiversity and ecological connectivity within the plan area, including..... rivers, streams, natural springs, wetlands,, other landscape features and associated wildlife where these form part of the ecological network and/or may be considered as ecological corridors or stepping stones in the context of Article 10 of the Habitats Directive.

Objective NHB3 (Water Resources) seeks to protect the water resources in the plan area, including rivers, streams, lakes,as well as surface waters, aquatic and wetland habitats and freshwater and water dependant species in accordance with the requirements of relevant EU Directives and Regulations, the Western River Basin District Management Plan 2009-2015, Shannon International River Basin Management Plan 2009-2015 and other relevant guidelines, and also have regard to the Freshwater Pearl Mussel Sub-Basin Management Plans.

DM Standard 40

The following measures shall be applied to designated environmental sites:

- a. *Appropriate Assessment*: screening for AA and/or AA will be required where the proposed development may impact (directly and indirectly), or in combination with other projects, on a European site.
- b. *Ecological Assessment*: may be required for small projects in other areas.
- c. *Environmental Impact Statement/Assessment* of the effects of certain public and private projects on the environment is required.

7.0 Natural Heritage Designations

The site is located within 15km of several SACs and NHAs including a section of the Lough Corrib SAC which is approximately 2km to the W and the Derrynagran Bog NHA which is located c.500m to the S of the proposed development

8.0 The Appeal

8.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- AA Screening and Flood Risk Assessment reports were submitted.
- Proposed shed would be located at the highest part of the farmyard complex where there are existing slatted tanks and sheds which have never been affected by flooding.
- The proposed slatted tank would be constructed to DAF&M specifications and would be waterproof like all slurry tanks..

- Report from Environmental Consultant concludes that although the underground chamber would be below the 8.85m level it is waterproof and there would be no egress of slurry nor ingress of water during the winter.
- The site specific flood risk assessment took account of climate change in the calculations as per the Guidelines (which do not always require FRAs for small scale developments) and the report calculated up to 0.1% AEP which exceeds the 1% AEP + climate change.
- The TBM levels are suitable and the accompanying map indicates the extent above the CFRAM 0.1% AEP that the flood plain would have to expand to above the CRAM predictions prior to the FFL of the proposed structure becoming endanger of flooding.
- The existing c.70-year-old house along the stream, which has a FFL of 7.60m, has never been flooded, and the proposed FFL of the shed would be 8.85m.
- The distance between the 70m contours directly S of the proposed shed is c.140m with an average cross sectional depth below the 70m contour measured at c.1.4m which gives a cross section of c.196sq.m,
- The topography falls in an EW direction drooping 2.3m in 131.5m and continues to fall in a W direction, thus the water would have to flow at a rate greater than 156.8m³/sec prior to the FFL of the proposed structure becoming endanger of flooding.
- Given that the catchment of 3.11sq. km and assuming 100% run off, this means hat there would have to be continuous rainfall of 181.5mm/hr (or 4,356mm/24hr).

- The nodes/bridges at this location have been ignored as water overtopping the bank will flow down the local access road and adjacent fields and not endanger the FFL of the proposed structure.
- Revised site layout map submitted which shows the difference between the ground level and the FFLs at the proposed development and the existing road levels along the public road along with cross sections through the site.
- The PA's concerns with respect to the relationship between the location of the waterproof underground chamber, the water table and the SAC is unclear.

8.2. **Planning Authority Response**

None received.

8.3. **Other Party Responses**

None received.

8.4. **Observations**

None received.

8.5. **Prescribed Bodies**

The appeal was circulated to An Taisce, the DAH&G (DAU) IFI (WRBD) and the Heritage Council with no responses received.

8.6. **Further Responses**

None received.

9.0 **Assessment**

9.1. ***Identification of key issues***

I consider the key issues in determining this appeal are as follows:

- Principle of development
- Material contravention
- Visual amenity
- Flood risk
- Appropriate Assessment

9.2. ***Principle of development***

The proposed development would be located within a rural area covered by the Galway County Development Plan 2015-2021 and it would form part of an existing farm yard complex. The proposed construction of loose housing shed with slatted tank and manure pit to include a concrete apron and all associated site works would therefore be acceptable in principle.

9.3. ***Material contravention***

The planning authority refused planning permission for the proposed development for two reasons. Reason no.2 related to the negative effect of the proposal on the integrity and conservation objectives of the Lough Corrib SAC and SPA which is ecologically linked to the site by way of the fluvial flood risk area; and material contravention of policies, objectives and development management standards

(Policy NHB1, Objectives NHB1,2 & 3, and DM Standard 40). It should be noted that the Lough Corrib SPA designation does not extend along the watercourses to the E.

Section 37 (2) (a) and (2) (b) of the Planning and Development Act, 2000 (as amended) set out the circumstances under which the Board can give overrule the decision of a planning authority when material contravention forms part of the reason for refusal.

The proposed development is not of national or regional importance, the Development Plan incorporates all relevant national planning policy and regional guidance, the policies and objectives are clearly stated in the Plan, and the pattern of planning permissions since the last Development Plan was adopted reflect current planning policy for the area.

However, it is noted that Policy NHB1, Objectives NHB1,2 & 3, and DM Standard 40 are generic in nature and not site specific. They generally relate to compliance with national and regional guidance and the submission of certain documents to support the application such as an AA Screening Report, which has been submitted by the applicant. I am therefore satisfied that material contravention is not a relevant issue in this instance and that the Section 37 (2) (b) restrictions do not apply.

9.4. ***Visual amenity***

The proposed development would be located within a low lying rural area which is designated as a Class 1 Low sensitivity landscape. The proposed slatted shed and associated works would form part of an existing farm yard complex and the shed would be located in the N section of the complex to the N and W of existing farm buildings. The proposed development would not have an adverse impact on the visual amenities of the area, subject to the submission of design details.

9.5. ***Flood risk***

The proposed development would be located within a low lying rural area which slopes gently down in a southerly direction to the local road and it is located to the N and W of two bogs. The site and the surrounding fields are drained by a network of streams that drain S to the Richmond Stream that flows W along the S site boundary to a larger watercourse that ultimately discharges to Louth Corrib. The 2011 OPW Preliminary Flood Risk Assessment (PFRA) maps identify the site as being within an area at risk of flooding and the proposed development would be located within Flood Risk Area (Fluvial 100-year event) as per the Council's Stage 1 Strategic Flood Risk Assessment for County Galway. Objective FL1 (b) of the Development Plan requires that development proposals in areas where there is an identified or potential risk of flooding or that could give rise to a risk of flooding elsewhere will be required to carry out a Site-Specific Flood Risk Assessment, and justification test where appropriate, in accordance with the provisions of 2009 Guidelines.

The applicant submitted a Flood Plain Report in response to the Planning Authority's request for Further Information. The report concluded that based on the calculations, CFRAM maps, historic maps, local knowledge and topography it can be inferred that the FFL of the proposed structure at a TBM of 8.85m should not be at risk of flooding during the 1% to 0.1% AEP. The topography of the area dictates that should the Richmond Stream overtop the bank then the excess water would flow down the local access road and away from the site. The proposed development would not interfere, reduce or remove any area from the existing flood plain nor would the discharge of storm water directly to the stream increase the flood risk potential or the flood plain. The appeal submission and provided further technical information in relation to the proposed works, climate change and the character of the site and environs.

As a starting point, the proposed slatted shed, manure tank and concrete apron would be located within an existing long established farmyard complex that contains several other structures including slatted sheds.

The proposed development would be located in the N section of the site on lands that are currently under grass but adjacent to an existing shed and concrete yard. The FFL of the proposed shed and concrete apron would be c.8.85m whilst the FFL of the site entrance in the vicinity of the stream is 7.80m. The proposed structures and concrete apron would give rise to a marginal increase in surface water and storm water runoff within the existing farmyard complex however this could be managed by way of on-site drainage arrangements within the complex which should be agreed in writing with the planning authority before development commences.

The surrounding area, which comprises the adjacent fields to the N, the proposal site and the existing farmyard complex, slope gently down to the Richmond Stream to the S, and the lands beyond the stream slope in a S and SW direction and any bank overspill would mainly follow a similar path away from the farmyard. Furthermore, I am satisfied that the existing farmyard structures and the neighbouring house have not been flooded by the stream during flood events in recent decades.

Having regard to the long established presence of a farmyard at this location and the position of the proposed development in the highest northernmost section of the site, I am satisfied that the proposed structure and concrete apron would not give rise to an increased risk of flooding in the area or be affected by rising flood waters, to any significant extent.

The proposed manure tank would be located in the NE corner of the development site, the FFL of the slatted shed and concrete apron would be c.8.85m and the tank would be c.2.4m deep which would locate it below the 7.80m level at the site entrance in the vicinity of the stream. The applicant states that the tank would comprise a water tight structure which would be constructed in accordance with all relevant specifications. I am satisfied that there would be no leakage of water from the tank to groundwater, provided that it is properly constructed. Having regard to the proposed FFL in the shed and the change in levels within the site and to the c.95m separation distance between the proposed tank and the stream, I am satisfied that rising flood waters from the stream would not affect the proposed manure tank or cause its contents to overspill.

In relation to the concerns raised in relation to precedent, it is noted that the proposed development would be located within a long established farmyard complex which also has the benefit of a planning permission for existing slatted sheds.

9.6. ***Appropriate Assessment***

There are several European sites located within a 15km radius of the proposed development and the applicant submitted an Appropriate Assessment Screening Report. The report described the proposed development and its location; it identified the relevant European Site within the zone of impact as being the Lough Corrib SAC (site code:000297) c.2km to the W of the appeal site and it listed the Qualifying Interests and Conservation Objectives. The report identified the main project elements and described any likely direct, indirect or secondary impacts of the project (alone or in combination with other plans or projects) on the SAC. The report concluded that the precautionary mitigation measures recommended covering both construction and subsequent use would ensure that the project would not have any direct or indirect effects on the Lough Corrib SAC. It is noted that the precautionary mitigation measures relate to standard construction practices and compliance with standard specifications.

Lough Corrib is situated to the N of Galway city and an area of c.18,240 ha (the entire site is 20,556 ha). The surrounding lands to the S and E are mostly pastoral farmland, while bog and heath predominate to the W and N. A number of rivers are included within the cSAC as they are important for Atlantic Salmon and these include

the Clare, Grange, Abbert, Sinking, Dalgan and Black to the E. Adjoining areas of conservation interest, including raised bog, woodland, grassland and limestone pavement, have also been incorporated into the site. According to the NPWS the main threats to the quality of this cSAC are from water polluting activities resulting from, amongst other things, the intensification of agricultural activities on the E side of the lake.

The Conservation Objective seeks 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 and the long list of Qualifying Interests include a variety of freshwater plants and animals.

The cSAC designation for Lough Corrib extends from the lake and along the main watercourses that drain into the lake, the nearest of which is located c.2km to the W of the site at Lavally. The Richmond stream which flows along the S site boundary with the farmyard complex provides a direct aquatic link to the SAC and both watercourses are located within the same fluvial flood plain. However, the proposed development would be located c.95m upslope and to the N of the stream, and the proposed manure tank would comprise a self-contained and water tight structure which would have no direct physical link to the stream.

Having regard to the difference in levels and the separation distances, I am satisfied that the proposed development would not have a direct or indirect adverse effect on the integrity of the Lough Corrib SAC. There are no other proposed plans and projects in the surrounding area and therefore no in-combination effects are predicted. The proposed development would be located within the confines of an existing long established farmyard complex and there is potential for cumulative effects. However, I am satisfied that any impacts would not be significant provided that the proposal is constructed and operated in accordance with all relevant specifications and that all associated activities including manure spreading are carried out in accordance with all relevant European Directives and national legislation with regard to environmental protection. I am satisfied that the proposed development would not have any adverse in-combination or cumulative effects on the integrity of the Lough Corrib SAC.

Having regard to all of the above it is reasonable to conclude that 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 European Site No.000297, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

10.0 Recommendation

10.1. I recommend that planning permission should be granted for the reasons and considerations as set out below.

11.0 Reasons and Considerations

Having regard to the provisions of:

- The Planning System and Flood Risk Management Guidelines for Planning Authorities, DEH&LG & OPW, November 2009, and
- The County Galway Development Plan 2015-2021, and

to the nature and scale of the proposed development and to the pattern of development in the area, it is considered that subject to compliance with the following conditions, the proposed development which would be located within an existing and long established farmyard complex, would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out 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 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 Irish Water and 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 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

4. 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

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, as amended.

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 18 weeks storage shall be provided in the underground storage tank. Prior to commencement of development, 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.

8. Details of the finishes of the agricultural shed 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.

Karla Mc Bride

Senior Planning Inspector

27th September 2016