



An
Bord
Pleanála

Inspector's Report PL02.246980

Development	Retention of existing silage pit and dry bedded extension to slatted shed (previous planning reference no: 07/540) and retention of entrance and associated site development works
Location	Aghabane, Killeshandra, Co. Cavan
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	15/457
Applicant(s)	Fearghal O'Reilly
Type of Application	Retention
Planning Authority Decision	GRANT
Type of Appeal	Third Party
Appellant(s)	Robert Butterly
Observer(s)	None
Date of Site Inspection	26 th October 2016
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.45 ha, is located on the northern side of a local road, in the townland of Aghabane, c. 2.3km north west of Killashandra, Co. Cavan. The site is bounded by agricultural lands to the north, east and west, and the public roadway to the south. A house, occupied by the appellant, is located to the south of the appeal site, on the other side of the local road.
- 1.2. The site features an agricultural shed and silage pit, as well as concrete yard and hardstanding areas, grassed areas and mature hedgerows and trees on the site boundaries. There are two vehicular entrances to the site, at the south eastern and south western corners, respectively.

2.0 Proposed Development

- 2.1. The applicant is seeking retention permission for the following elements:
 - Silage pit;
 - Relocation of the existing slatted shed (295 sq m) granted under Reg. Ref. 07/540;
 - Dry bedded extension (120 sq m) to the slatted shed;
 - Site entrance.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Cavan County Council decided to grant planning permission and the following Conditions are of relevance:
 - C2/C6: No water from paved areas or roof shall flow from the site. Uncontaminated water to be collected and discharged to watercourse.
 - C3/C4: Silage pit and dry bedded extension construction to be in accordance with relevant DAFM specifications.
 - C5/C7: Effluent and soiled water to be collected in effluent storage tank.

- C8: Landspreading of effluent not to occur where there is risk of runoff.
- C10: Landscaping plan to be submitted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Site is designated as a Locally Important Aquifer with Moderate Vulnerability. Waterbody is classed as Poor Ecological Status and must be restored to Good Ecological Status by 2021.
- Sufficient slurry storage is provided and adequate land is available for landspreading without exceeding statutory nitrogen limits.
- Compliance with Conditions and implementation of best practice measures identified in AA Screening Report will mitigate issues raised in submission.

3.2.2. Other Technical Reports

- Environment Section: Application form for farm developments required.
[Note: No subsequent report on file].

3.3. Prescribed Bodies

- Inland Fisheries:
 - All structures and practices should comply with European Communities (Good Agricultural Practices for Protection of Waters) Regulations 2014 and DAFM specifications.
 - Systems and measures should be put in place to minimise damage during construction.
 - Streams and watercourses should be protected and only clean water should discharge to surface water.
 - Spreading of manure should be in accordance with Good Agricultural Practice Regulations and take into account groundwater vulnerability.

3.4. **Third Party Observations**

- 3.4.1. One third party observation was made. The issues raised were generally the same as the appeal.

4.0 **Planning History**

4.1. **Subject Site**

- 4.1.1. **Reg. Ref. 07/540:** Permission to construct a three bay slatted shed with creep area, cubicles, effluent storage tank and concrete apron.

5.0 **Policy Context**

5.1. **Cavan County Development Plan 2014-2020**

- 5.1.1. The site is not zoned under the current Cavan Development Plan 2014-2020. Section 3.4 of the Development Plan relates to agriculture and farm diversification and sets out a number of Policies and Objectives to support development in this sector, subject to protection of the environment and visual amenity.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. A third party appeal was lodged by Robert Butterly. The grounds of appeal can be summarised as follows:
- Conditions of previous grant under Reg. Ref. 07/540 have been breached.
 - Warning letter issued to applicant for unauthorised development which is the subject of this retention application.
 - Silage pit is 55m from appellant's house resulting in significant odours and health impacts. Exposure to silage spores can cause permanent lung damage.

- History of pollution of watercourses and appellant's well with effluent. Complaints made to Cavan County Council and inspections/reports by Council, including Section 12 Notice under Water Pollution Acts. Appellant's water is still unsafe to drink.
- EPA has requested information under section 63 of the EPA Acts from Cavan County Council regarding sealing a roadside pipe. EPA file on the site is open.
- Negative visual impact from appellant's property.
- Devaluation of appellant's property.
- Repeated omission by the applicant of a second watercourse on the site. Watercourse carries effluent into Cullies River and Disert Lake. This Lake is described as being of poor ecological status.
- Granting retention would set a precedent for similar development.
- Site is elevated above road and slurry and silage is carried onto the road.
- Structures should be located on an alternative site at a suitable distance from dwellings. Alternatively, the applicant should return to the use of round bales.

6.1.2. A number of appendices are included with the appeal in support of the above points.

6.2. Applicant Response

6.2.1. The first party response can be summarised as follows:

- There is no risk to health from the smell of silage. Farmers lung is caused by exposure to mouldy silage or dusty hay when feeding animals.
- Drainage pipe has been blocked to prevent silage effluent discharging into roadside drain. It now only discharges into the slatted tank.
- Existing mature planting will be enhanced if permission is granted.
- There is no evidence that the development will affect property value. This is a rural agricultural setting.
- Rodents are attracted to animal feedstuffs and can be controlled with good agricultural practices.

- Previous practice of making round bales was more likely to result in groundwater pollution than a silage pit.
- Omission of reference to second watercourse was not intentional and Planning Authority was aware of its existence.
- Applicant made some mistakes in Winter 2015, however remedial works have been undertaken and he is now aware he must maintain drainage channels to prevent pollution.

6.3. **Planning Authority Response**

6.3.1. No further comments to make.

6.4. **Observations**

6.4.1. None received.

7.0 **Planning Assessment**

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

- Effluent Management.
- Residential amenity.
- Visual amenity.

7.2. **Effluent Management**

7.2.1. A drain/watercourse runs in a north/south direction c. 1m to the west of the dry bedded extension to the slatted shed. A second drain/watercourse also runs within c. 10m of the silage pit. Both of these drains connect before flowing south, past the appellant's house, to the Cullies River, which discharges into Disert Lough at a point c. 215m south of the appeal site. The watercourse adjacent to the slatted shed is not fenced off or otherwise provided with a buffer zone, and on the date of my site inspection cattle were located to the rear of the shed, immediately adjacent to the watercourse.

- 7.2.2. The Water Framework Directive mapping indicates that the ecological status of the Cullies River in this area is poor and that it is at risk of not achieving good status by 2021.
- 7.2.3. The proximity of the watercourses to the development clearly gives rise to the potential for surface water pollution of the river and lough as well as groundwater pollution, arising from the following sources:
- Silage effluent run-off.
 - Slatted shed and dry bedded extension run-off.
 - Landspreading of effluent.
- 7.2.4. The information and correspondence submitted with the appeal would appear to indicate a history of poor effluent management at the appeal site. The applicant has accepted this, but contends that these issues have now been resolved to the satisfaction of Cavan County Council.
- 7.2.5. I note that Inland Fisheries Ireland made an observation on the planning application, setting out their standard conditions for protection of watercourses.
- 7.2.6. Silage Effluent Run-off

No drainage drawings were submitted with the application, and only limited written information was provided regarding the drainage system for the silage pit and procedures for preventing water pollution.

It appears that silage pit effluent had been discharging to a roadside drain due to blockages in the system. The applicant claims that this pipe has been permanently blocked to prevent further discharge, and that collected effluent is instead discharged to the slatted shed tank. On the date of my site inspection I noted that there was no more than a trickle of water coming from this roadside pipe, which would appear to support the applicant's claim that the pipe has been blocked.

The concrete apron around the silage pit was relatively heavily soiled on the date of my site inspection and the drainage channels were clogged with silage material. I also noted that a large number of round silage bales had been arbitrarily piled abutting the eastern elevation of the shed, resulting in damaged wrapping and consequent leakage and pooling of effluent on grassed areas.

The planning application indicates that all works will be undertaken in accordance with relevant DAFM specifications, and this requirement was included in the Planning Authority's conditions. However, I note that the relevant DAFM specifications S120 and S128 for silage pits generally requires a 50m separation distance from any waterbody in the case of new farmyards and 60m distance from water supply sources. Since this is a retention application and since the silage pit is c. 40m from the watercourse and c. 50m from the appellant's drinking water well, it appears, therefore, that the DAFM specifications cannot be complied with in this instance.

7.2.7. Slatted Shed and Dry Bedded Extension Run-off

The dry bedded extension to the slatted shed is located just 1m from the watercourse along the western boundary at its nearest point. Since this extension is dry bedded (i.e. not a slatted unit over a tank) it will require animal waste and bedding to be removed, the shed to be cleaned out, and the bedding replaced on a regular basis. Given the proximity to the watercourse, I consider that this gives rise to a greater potential for effluent run-off and water pollution than the slatted shed, where all effluent is contained within the storage tank.

As with the silage pit, the relevant DAFM specification S123 generally requires a 10m separation distance from any waterbody in the case of extensions to an existing facility, and 50m in the case of new farmyards. Since the structure is existing, it appears therefore, that the DAFM specifications cannot be complied with in this instance either.

7.2.8. Landspreading of Effluent

The calculations submitted on foot of a request for further information indicate that the slatted shed's storage tank has capacity for 580.47 cubic metres, while 417.56 cubic metres of effluent will be produced over a 22 week period. 61.71 hectares of land are stated to be available for landspreading, which would result in a nitrogen loading of 72.76kg per ha. This would be compliant with Nitrates Directive requirements and, subject to the undertaking of landspreading in strict compliance with the provisions of the *Good Agricultural Practice for the Protection of Waters Regulations 2014*, I do not consider that the landspreading of effluent would result in a significant negative impact on water quality.

7.2.9. In conclusion, on the basis of the information submitted with the application and appeal, I consider that the development does not comply with DAFM requirements and specifications for such structures and consequently I am not satisfied that the development will not result in the pollution of watercourses. I recommend that retention permission be refused on this basis.

7.3. Residential Amenity

7.3.1. The appeal site is located c. 55m to the north of the appellant's property. Having regard to the nature of the development, which comprises the storage of slurry and silage, there is clearly potential for a negative impact on the appellant's residential amenity, primarily as a result of odour, noise and traffic.

7.3.2. The appeal refers to statutory requirements in relation to separation distances between agricultural buildings and residential dwellings. However, these relate to the exempted development provisions of the Planning and Development Regulations 2001, as amended, and are not binding in the determination of applications for planning permission.

7.3.3. With regard to odour, I consider that the main source of odour emissions is likely to be the slurry tanks under the slatted shed, particularly when they are being agitated or drained, rather than the silage pit. In this regard I note that agitating points are located on both the northern and southern sides of the shed. I noted on the date of my site inspection that while there was an odour on the appeal site, this was not noticeable at the appellant's property. However, weather conditions on the day were cool and damp which would tend to reduce the dispersion of odour emissions.

7.3.4. While the perception of odour is somewhat subjective and subject to individual sensitivity, I consider that the odour in this instance was typical of such agricultural developments and would not be out of place in this rural area. I therefore consider that the development would not give to a sufficient level of odour as would warrant refusal of planning permission on these grounds.

7.3.5. Due to the proximity of the appeal site to the appellant's property, the issues of noise and traffic also need to be considered. The primary source of both is tractor, tanker and associated vehicle and machinery movements. Having regard to the scale and agricultural nature of the development, and the low level of traffic on the local road, I

do not consider that the noise or traffic generation would have a significant impact on residential amenity.

- 7.3.6. In conclusion, I consider that the proposed development would not seriously injure the residential amenities of the appellant or other properties in the vicinity.

7.4. **Visual Amenity**

- 7.4.1. While the development is located at a higher level than the public road, it is reasonably screened from the roadway by existing hedgerows and trees. The presence of two entrances to the site within c. 40m is visually incongruous, however, and is unnecessary in my opinion. If the Board is minded to grant permission, I recommend that a Condition be imposed requiring the existing eastern access to be permanently closed and replaced with hedgerow planting. This would also be beneficial from a road safety perspective by limiting the number of vehicular access points.

- 7.4.2. The development is located c. 55m to the north of the appellant's property, which is the closest residential property. The development is readily visible from the appellant's property, particularly in autumn/winter due to the deciduous hedgerow planting. While the shed is relatively innocuous in appearance, the silage pit with its black plastic covering and ballast tyres does have an impact on the visual amenities of the area. However, I consider that both slatted sheds and silage pits are common agricultural structures, and therefore I do not consider that the placement of such structures and uses in a strongly agricultural area such as the appeal site would be seriously injurious to the visual amenities or established character of the area. Notwithstanding this, if the Board is minded to grant permission, I recommend that a Condition be included requiring the submission of a landscaping plan to reinforce and supplement existing planting along the roadside boundary.

8.0 **Appropriate Assessment**

- 8.1. The appeal site is located c. 215m from Disert Lough and c. 460m from Aghabane Lough. Both Loughs form part of the Lough Oughter and Associated Loughs Special Area of Conservation (Site Code 000007). The lower part of Disert Lough, at a

distance of c. 1.2km from the appeal site also forms part of the Lough Oughter Complex Special Protection Area (Site Code 004049).

- 8.2. I do not consider that there would be any potential for other European sites to be affected due to their separation distance from the development and the absence of effective pathways between them and the development.
- 8.3. The conservation objective for the Lough Oughter and Associated Loughs SAC is to maintain or restore the favourable conservation condition of the following Annex I habitat and Annex II species:
- Natural eutrophic lakes with Magnopotamion or Hydrocharition – type vegetation.
 - Bog woodland.
 - Otter (*Lutra lutra*).
- 8.4. The Site Synopsis for the SAC notes that the main threats to the quality of the site are water polluting activities such as run-off from fertiliser and slurry application and sewage discharge which have raised the nutrient status of some lakes to hypertrophic.
- 8.5. There are two conservation objectives for the Lough Oughter Complex SPA. The first is to maintain or restore the favourable conservation condition of the following bird species:
- Great Crested Grebe (*Podiceps cristatus*).
 - Whooper Swan (*Cygnus Cygnus*).
 - Wigeon (*Anas Penelope*).
- 8.6. The second is to maintain or restore the favourable conservation condition of the wetland habitat at the SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.
- 8.7. A Habitats Directive Screening Report was submitted on foot of a request for further information. The report concludes that there will be no impacts upon the integrity or the conservation objectives of any Natura 2000 site. However, the Report states that *“there are no streams or drains within or adjacent to the application site”* and that there is no source-pathway-receptor linkage between the application site and the

SAC. This is not correct, as there are two drains/watercourses within or immediately adjacent to the site which connect to the Cullies River which feeds into Lough Disert, c. 215m from the appeal site. One of these watercourses is within 1m of the dry bedded extension to the slatted shed. There is therefore a direct pathway between any potential source (i.e. effluent from slatted shed and silage pit) and the receptor (Lough Disert).

- 8.8. In addition to the surface water pathway, there is likely to be a potential groundwater pathway given the proximity to the Lough and the fall in ground level between the appeal site and the Lough.
- 8.9. The Water Framework Directive mapping indicates that the Cullies River in this area is of poor ecological status, while Disert Lough is indicated as being of moderate ecological status.
- 8.10. The Screening Report's conclusion is dependent on compliance with the provisions of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014 and relevant DAFM specifications. However, it appears that there is a history of issues with effluent management on the appeal site, as documented in the appeal. The applicant has accepted that issues arose in the past but contends that these issues are now resolved. However, as outlined above, the development does not appear to comply with DAFM specifications, and consequently I am not satisfied that sufficient evidence has been provided by the applicant to demonstrate that no future water pollution issues will arise as a result of the development.
- 8.11. In the absence of sufficient evidence, and having regard to the failure of the Habitats Directive Screening Report to identify the clear pathways which exist between the appeal site and the SAC and the poor ecological status of the Cullies River which serves as a pathway, I am not satisfied that there will be no impacts upon the integrity or the conservation objectives of the Natura 2000 site.

9.0 Recommendation

- 9.1. I recommend that planning permission should be refused for the reasons set out below.

10.0 Reasons

1. Having regard to the lack of adequate separation distance between the proposed development and: the watercourse to the west; the private well serving the neighbouring property to the south; and the Cullies River which is identified as being of poor ecological status under the Water Framework Directive mapping, it is considered that the proposed development would be prejudicial to public health and would result in an unacceptable risk of environmental pollution. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application and appeal, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the Lough Oughter and Associated Loughs SAC, or any other Natura 2000 site. In such circumstances the Board is precluded from granting permission.

Niall Haverty
Planning Inspector

14th November 2016