



An
Bord
Pleanála

Inspector's Report PL03.247073

Development	Agricultural slatted unit plus ancillary site works
Location	Killofin, Labasheeda, County Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	P16/427
Applicant(s)	Alan McMahon.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Geraldine Moloney & Trevor Morrissey
Observer(s)	None
Date of Site Inspection	11/10/2016
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1. The subject site is located south of the R473, approx. 1.4km west of the village of Labasheeda in western Clare. The narrow rural road runs west to the small village of Killofin and serves a small number of dwellings and agricultural landholdings.
- 1.2. The subject site refers to an irregularly shaped site to the rear (west) of Killofin House, both having been part of the same landholding until quite recently. A stone wall runs along the road frontage with an agricultural gate providing access to the site. A second agricultural gate leads to a small hard standing with two sheds – one enclosed and one open. To the east (rear) of the sheds and adjoining the boundary wall with Killofin House a number of silage bales were stored.
- 1.3. Two outbuildings of Killofin House directly abut the south and the south-eastern boundaries of the subject site.
- 1.4. Photographs and maps in Appendix 1 serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Permission was sought to construct an agricultural slatted unit of 135.85sq.m. with an underslat tank of 242.39sq.m. to house 24 no. animals. Part 4 of the application form states that the proposed development is to allow better management of existing stock and provide the capacity to increase stock levels. The subject site is adjacent to an agricultural land holding of 105acres. Effluent disposal will be by means of a contract tanker during the months Feb to Oct.

3.0 Planning Authority Decision

3.1. Decision

By order dated 24th May 2016 Clare County Council an order of intention to GRANT permission subject to 7 no. conditions issued. Conditions of note:

- 2. Development shall be constructed in accordance with the current formats of the Dept. of Agriculture, Fisheries and Food S123 Minimum Specification for Bovine Livestock Units and Reinforced Tanks and S128 Minimum Specification for Concrete Silage Bases.
- 3. All effluents shall be managed and disposed of in strict accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2014
- 4. Clean surface water and run-off from roofs shall be collected and directed to the nearest watercourse, but shall not be allowed to flow onto any roadway or discharge to soiled water / slurry / effluent storage areas.
- 5. Any increase in stock numbers shall be restricted such that adequate capacity is available to meet the requirements for slurry storage as outlined in the European Communities (Code of Good Agricultural Practice for Protection of Waters) Regulations 2014.
- 6. Any increase in stock numbers shall be restricted such that the amount of livestock manure applied in any year to land on a holding, together with that deposited to land by livestock, shall not exceed an amount containing 170kg of nitrogen per hectare, as outlined in the European Communities (Code of Good Agricultural Practice for Protection of Waters) Regulations 2014.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Proposed development has no adverse impacts on the visual amenity of the area. Proposed shed would be 38m from dwelling / B&B to the south. Existing cubicle house is closer to the dwelling than the proposed structure. Subject site is a rural area where such activities are to be accommodated. Amenities of the area would not be affected by the proposed development. No statutory separation distances for agricultural buildings and residential dwellings. Surface water management issues may be dealt with by condition. Proposed development is acceptable.

3.2.2. Other Technical Reports

- **Environment Section:** Site located in an area of extreme groundwater vulnerability with a locally important groundwater aquifer and well drained soils. Groundwater rated as 'good'. No natural field drains in the area but likely to be localised drainage routes on site. Site is 483m from shore of Shannon Estuary SAC 002165. No surface water link between the two sites but there would be a link between the underlying

groundwater body and the transitional waters of the Estuary. The rate of transmissivity within the Kilrush ground water body ranges from 2-20sq.m./day depending on the level of fractures and fissures in the bedrock. Soil and subsoil in this area are most likely shallow and well drained. Therefore groundwater receptor is at potential risk. Two wells in close proximity – one serving adjoining residential property and one in lands 191m to the south-east, the use of which is not known. Proposed development must be in accordance with Good Agricultural Practice Regulations, Dept. of Agricultural, Food and Marine Specifications for Agricultural Buildings and effluent facilities. Council site inspection found no farm waste facilities on site and uncontained effluent. Proposed development would address farm waste collection and management requirements and appear adequate. 6 no. conditions recommended.

3.3. **Prescribed Bodies**

- **An Taisce:** Proposed development must comply with rural development standards of the development plan (CDP8.1 and 9.2), Habitat and Water Framework Directives. Archaeological consideration of landscape and adjoining structures.

3.4. **Third Party Observations**

- **Geraldine Moloney & Trevor Morrissey:** Inaccurate and / or incomplete application drawings, existing development is contaminating water supply (EHO report submitted), proposed development should be a minimum of 100m from dwelling, proposed development detracts from setting.

4.0 **Planning History**

None on file

5.0 **Policy Context**

5.1. **Clare County Development Plan 2011 -2017**

Appendix 1 of the development plan outlines the Council's development management guidelines. Section A1.8 refers to agricultural development. It states that the rural countryside is a natural resource with agricultural activity being particularly important. In considering proposals for agricultural development (walls, fences, yards, stables, sheds, slurry pits etc.) the Planning Authority will have regard to the Department of Agriculture *Guidelines and Recommendations on the Control of Pollution from Farmyard Wastes* together with the following:

- Siting and design, which should be in sympathy with the surrounding area;
- The use of muted coloured materials;
- Grouping of buildings will be encouraged;

- Adequate effluent storage facilities;
- The Planning Authority will require adequate provision for the collection, storage and disposal of effluent produced from agricultural developments. The European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2006 and 2007 set out the requirements for storage of farm effluents and the minimum holding periods for storage of farm wastes. In Clare the holding period required for the purposes of calculating waste storage facilities is 18 weeks. It is permitted to spread soiled water all year round, thus the minimum holding period is 10 days. For silage the short term storage period is 3 days. All agricultural developments must be designed and constructed in accordance with the Minimum Specifications as set out by the Department of Agriculture, Fisheries and Food. *The Living Farmland*, a guide to farming with nature in Clare (2008), is a useful reference to issues for consideration when planning farm developments.

Section 9.3.1.6 of the development plan deals with agricultural waste. It states that the Nitrates Directive, as implemented by the *EC Good Agricultural Practice for Protection of Waters Regulations 2009* is the main statutory provision which places an onus on Ireland to prevent pollution of groundwater and surface water from nitrates associated with agriculture sources. Waste arising from agricultural practices on farms should be dealt with in a safe and sustainable manner having regard to the protection of the environment and public safety implications associated with inappropriately disposed waste.

Objective CDP 9.8 states that it is an objective of the Council to ensure that the disposal of agricultural waste is carried out in a safe, efficient and sustainable manner having regard to the environment and health and safety of individuals, and in compliance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2009 S.I. No.101 of 2009 and the Litter Pollution Act, 1997.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development is just over 30m from a residential property.
- The building referred to as a cubicle house on the application drawings is in use as a store. The roof is asbestos and all run-off from the roof ends up in the appellant's property.
- The appellant's outbuildings are roofed with old slate and are used as part of the dwelling: cookhouse, toilets and a loft bedroom. Water run-off penetrates these building walls and floors.
- The Board is requested to refer to the environmental report and the An Táisce report.

- The proposed cattle wintering facility will lead to an increase in noise pollution, strong silage and effluent smells, odours and dangerous gases around the appellants' back yard.
- Issues of water pollution have occurred which left the appellants with no water supply.
- The consequences of the proposed development are:
 - Agricultural building with slurry volumes within 30m of a house
 - Noise pollution from cattle and associated machinery
 - Applicant arriving at night to check animals, disturbing the appellants.
 - Light associated with the shed disturbing the appellants' property
 - Increase in activity from tractors, trailers, lorries for cattle etc.
 - Interference with the appellants' privacy
 - Possibility of a silage heap next to the appellants' house with detrimental effects
- The proposed development will impact the appellants' business.

6.2. **Applicant Response**

- Applicant purchased the outside farm and existing farmyard in 2013. The appellants purchased their home in 2014. Both properties were originally one single holding.
- The dwelling house is surrounded by two working farms in a rural location.
- The existing farmyard complex consists of a 4 bay haybarn, 2 no. cow sheds, crush and holding yard with no existing means of collecting farmyard effluent
- Cattle have been housed in the existing farmyard complex for the winters of 2013, 2014 and 2015 without any problems. Silage bales have been stored on site during the same period.
- The proposed slatted unit with effluent collecting underslat slurry tank would be further away from the appellants dwelling than the existing farmyard buildings and would enhance pollution control within the new tank.
- The personal comments made by the appellants are untrue.
- There is no change of use permission for the use of the appellants out buildings as a cookhouse, bedroom, toilet etc. or change of use of appellants' house as a B&B.

6.3. **Planning Authority Response**

- Having regard to the intended use of the proposed development, the policies of the current development plan and the pattern of development in the area, it is considered that, subject to conditions attached to the planning permission granted, the proposed development would not

seriously injure the amenities of the area or of property in the vicinity and would otherwise be in accordance with the proper planning and sustainable development of the area.

7.0 Assessment

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

- Principle of the proposed development
- Impact on Residential Amenity
- Appropriate Assessment

7.2. Principle of the proposed development

The proposed slatted shed of 135.85 sq.m. with under tank storage of 242.39 sq.m. is to be located in an existing farmyard, adjoining an existing haybarn and a cubicle cowshed. The applicant states that up to 24 no. cattle will be housed over winter in the slatted shed. Cattle had been wintered in the cowshed for the previous three winters with no means of collecting farmyard effluent. The adjoining residential property has reported issues with effluent / slurry build up on the farmyard previously. Their water supply well has also experienced contamination in the past. The report of the Environment Section of the Council notes that the site is located in an area of extreme groundwater vulnerability with a locally important aquifer and well drained soils. The report notes the possible risk to groundwater due to the rate of transmissivity and the shallow soils and subsoils of the area. The report notes the location of two water supply wells in close proximity to the site and the importance of ensuring that development at the site is contained, appropriately maintained and managed in accordance with the Good Agricultural Practice regulations.

Given that the proposed development represents an improvement on the existing situation where no means of collecting or storing effluent exists, and having regard to the location of the within an existing farmyard, in a rural area where agriculture is the predominant land use, it is considered that the principal of the proposed development is acceptable.

7.3. Impact on Residential Amenity

The appellants state that the proposed development is too close to their residential property, that the proposed development will lead to an increase in noise and odour pollution and that it will damage their business.

The management of effluent arising from agricultural activity is governed by specific legislation set out in the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014 (SI no. 31 of 2014).

The proposed development does not represent an increase in agricultural activity and therefore if carried out in accordance with the good agricultural practice regulations should not result in an increase in noise, odour or other pollution. Cattle are over-wintered on the subject site and that right exists whether the proposed development proceeds or not. The proposed development which seeks to house the cattle and address their waste matter in a more appropriate manner must be seen to represent an improvement on the existing situation where effluent storage and disposal is uncontrolled. Agitation and removal of slurry from the shed at the appointed times will increase odour in the immediate area but that is the nature of the rural environment in which the appellant and the applicant site are located.

The proposed slatted shed will be separated from the appellant's residential property by the existing cow shed and hay barn. Some of the consequences of the proposed development outlined by the appellants in their grounds of appeal – such as the applicant arriving at night to check the animals, lights associated with the sheds, increase in agricultural vehicles and machinery – are all activities that are associated with the housing of animals on the existing farmyard and not specific to the proposed slatted shed.

Given the location of the subject next to an existing working farmyard, it is considered that the proposed development will not injure the residential amenities of the appellant's property to any significant degree.

7.4. **Appropriate Assessment**

The subject site is located approx. 0.45km from the River Shannon and River Fergus Estuaries SPA (004077) and also the Lower River Shannon SAC (002165).

- 7.4.1. **The River Shannon and River Fergus Estuaries SPA (004077)** form the largest estuarine complex in Ireland. The site comprises the entire estuarine habitat from Limerick City westwards as far as Doonaha in Co. Clare and Dooneen Point in Co. Kerry. The site has vast expanses of intertidal flats which contain a diverse macro-invertebrate community, e.g. *Macoma-Scrobicularia-Nereis*, which provides a rich food resource for the wintering birds. Salt marsh vegetation frequently fringes the mudflats and this provides important high tide roost areas for the wintering birds. Elsewhere in the site the shoreline comprises stony or shingle beaches. The qualifying interests for the SPA are: Cormorant, Whooper Swan, Light-bellied Brent Goose, Shelduck, Wigeon, Teal, Pintail, Shoveler, Scaup, Ringed Plover, Golden Plover, Grey Plover, Lapwing, Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redshank, Greenshank and Black-headed Gull.

The conservation objectives for the site are to maintain the favourable condition according to the defined attributes and targets for each qualifying interest. The attribute for each of the qualifying interests are population trend and distribution. The target for each of the species is the stabilisation or increase of long term population trend and that there should be no significant decrease in the range, timing or intensity of use of areas by each of the species. The target for the conservation objective for the wetlands habitat is that the permanent area occupied by the habitat should be stable and not significantly less than the area of 32,261ha other than that occurring from natural patterns of variation.

Having regard to the nature and scale of the proposed development and / or the nature of the receiving environment, and / or proximity to the SPA, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on the River Shannon and River Fergus Estuaries SPA.

- 7.4.2. There is no direct surface water source-pathway receptor link between the subject site and the Lower River Shannon SAC. However, as noted above, the groundwater in the area of the subject site is of extreme vulnerability with shallow and well drained soils overlying. The ground water link to the SAC is a potential source pathway receptor.

The **Lower River Shannon SAC (002165)** stretches along the Shannon valley from Killaloe in Co. Clare to Loop Head/ Kerry Head, a distance of some 120 km. The site thus encompasses the Shannon, Feale, Mulkear and Fergus estuaries, the freshwater lower reaches of the River Shannon (between Killaloe and Limerick), the freshwater stretches of much of the Feale and Mulkear catchments and the marine area between Loop Head and Kerry Head. The underlying geology ranges from Carboniferous limestone (east of Foynes) to Namurian shales and flagstones (west of Foynes) to Old Red Sandstone (at Kerry Head). The salinity of the system varies daily with the ebb and flood of the tide and with annual rainfall fluctuations seasonally. The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive:

[1110] Sandbanks, [1130] Estuaries, [1140] Tidal Mudflats and Sandflats, [1150] Coastal Lagoons*, [1160] Large Shallow Inlets and Bays, [1170] Reefs, [1220] Perennial Vegetation of Stony Banks
[1230] Vegetated Sea Cliffs, [1310] *Salicornia* Mud
[1330] Atlantic Salt Meadows, [1410] Mediterranean Salt Meadows
[3260] Floating River Vegetation, [6410] *Molinia* Meadows
[91E0] Alluvial Forests*, [1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*), [1095] Sea Lamprey (*Petromyzon marinus*)

[1096] Brook Lamprey (*Lampetra planeri*), [1099] River Lamprey (*Lampetra fluviatilis*), [1106] Atlantic Salmon (*Salmo salar*)
[1349] Bottle-nosed Dolphin (*Tursiops truncatus*)
[1355] Otter (*Lutra lutra*)

The conservation objectives for the site are to restore or maintain the favourable condition according to the defined attributes and targets for each qualifying interest. Each of the conservation objectives are interlinked, and assessments cannot consider an attribute in isolation from the others. A number of the conservation objectives are based on water quality and / or the hydrological regime. The hazard of effluent from the subject site to enter the ground water and thus the waters of the SAC would lead to significant impacts. That the proposed development is to be constructed, maintained and carried out in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014, is not a mitigation measure but rather an intrinsic part of the work to be carried out. I am satisfied that the significant impacts identified above are not likely, having regard to the required compliance with the regulations and the small scale of the proposed development. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Lower River Shannon SAC (002165), in view of the sites Conservation Objectives and a Stage 2 Appropriate Assessment is not therefore required.

8.0 Recommendation

I have read the submissions on file, visited the site, and have had due regard to the provisions of the Clare County Development Plan 2011 - 2017 and all other matters arising. It is considered that, subject to compliance with the conditions set out below, the proposed development would not injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area. I recommend permission be GRANTED subject to the following conditions:

9.0 Reasons and Considerations

Having regard to the location of the development to be carried out within an existing farmyard, in a rural area where agriculture is the predominant land use, and to the relative scale of the development in the context of the existing development in the farmyard, it is considered that, subject to compliance with the conditions set out below, the development to be carried out, retained and completed would constitute an environmental improvement, would not seriously injure the amenities of the area or of property in the vicinity, would

not be prejudicial to public health, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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. 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 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, 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. 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.

6. 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.

Gillian Kane
Planning Inspector

24 October 2016