



An
Bord
Pleanála

Inspector's Report PL92.247733

Development	Permission for the erection of agricultural structures, to include livestock shed with underground effluent storage tank, storage shed and associated site works.
Location	Ballymagree, Kilruane Nenagh.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	16/600887.
Applicants	Patrick Kelly.
Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to conditions.
Appellant	Margaret and David Henderson.
Observer	None
Date of Site Inspection	6 th March 2017.
Inspector	Bríd Maxwell.

1.0 Site Location and Description

- 1.1. The appeal site which has a stated area of 0.69 hectares (centred within an overall landholding of approximately 19 hectares) is located within a rural area approximately 5km to the north east of Nenagh and 8km to the southeast of Cloughjordan in County Tipperary. The site which comprises an established farmyard is located to the north of the small dispersed village settlement of Kilruane which includes a pub / restaurant (The Fairways), a school, church and a number of scattered dwellings.
- 1.2. The appeal site is accessed from a minor local link road connecting the Regional Road R491 Nenagh – Cloughjordan and the Old Birr Road. Nenagh Golf Club is located approximately 300m to the northeast of the appeal site and the Nenagh Cloughjordan Railway Line is approximately 120m to the north of the site. The appeal site adjoins to the north of the first party's dwelling site and the dwelling of the third party appellant is located approximately 100m to the west of the established farmyard buildings.
- 1.3. The Board is referred to the appendices to this report which include maps and photos of the appeal site and vicinity.

2.0 Proposed Development

- 2.1. The application as set out in the public notices seeks permission for the construction of an agricultural structure to include livestock shed with cubicle bed for 56 cows (443sq.m) with underground effluent storage tank and a storage shed (85.7sq.m) and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

By order dated 22nd November 2016 Tipperary County Council decided to grant permission subject to 9 largely standard conditions also including Condition 9 requiring hedgerow planting of native species along the western boundary of the site.

3.2. Planning Authority Reports

The report of the area planner noted third party concerns and recommended permission subject to conditions including a requirement for landscaping to western site boundary.

3.3. Third Party Observations

Submission by the appellant to the local authority requests that a condition apply requiring the planting of a hedgerow along the western site boundary and further suggests that a requirement for the establishment of cow path to prevent movement of cows along the public road would be in the interest of traffic safety, rural and residential amenity.

4.0 Planning History

- 12/510052 Permission granted 4/5/2012 for the erection of an agricultural building (486sq.m) with underground slatted effluent storage tank. Condition 5 required the planting of a hedge along the northern and western site boundaries.
- 11/5100172 Permission granted 16th August 2011 for agricultural building with underground slatted effluent storage tanks.
- 06/51/1546 Permission for a slatted unit with slurry storage tank, roof over existing slurry storage tank, dairy parlour, collecting yard, handling facilities and associated site works. Floor area 415 sq.m.
- 51/18562 Permission for slatted house June 1997.

5.0 Policy Context

5.1 Development Plan

The Tipperary County Development Plan 2010 as varied refers.

- *Policy ED7 Agriculture*

It is the policy of the Council

(a) To protect farms and high quality agricultural land from proposals for development where such would result in negative results upon their viability.

(b) To facilitate and encourage the development of alternative farm enterprises including agri-tourism development and farm shops subject to compliance with the development management standards set out in Chapter 10.

- *Policy TI11: Management of Agricultural Slurries.*

It is the policy of the council to ensure that proposals for agricultural developments, as appropriate comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 or any amendment thereof.

5.2 EUROPEAN COMMUNITIES (GOOD AGRICULTURAL PRACTICE FOR PROTECTION OF WATER) REGULATIONS 2014

5.2.1 The Regulations provide statutory support for good agricultural practice to protect waters against pollution. The Regulations place certain obligations on occupiers of agricultural holdings in relation to farmyard management, collection and storage of manures, slurry, soiled water etc, nutrient management and prevention of water pollution. They also set out minimum requirements for storage, set limits on the land application of fertilisers and establish periods when land application of fertiliser (organic and chemical) is prohibited.

5.2.2 Under the Regulations, the country is divided into four areas with varying storage period requirements for livestock manure (Schedule 3). Prohibited spreading

periods are set out in Schedule 4. The appeal site is within an area, which specifies a minimum storage period of 16 weeks. The land application of waste is prohibited between the period from October 15th to January 31st for organic fertiliser (other than farmyard manure) and from November 1st to January 31st for farmyard manure.

5.3 Natural Heritage Designations

The site is not located within or proximate to a designated site. The designated sites in the area and approximately distance is as follows:

- Lough Derg North East Shore SAC (c9.5km)
- Lough Derg Shannon SPA (c9.5km)
- Slievefeilim to Silvermines Mountains SPA (c13km)

6 The Appeal

6.1 Grounds of Appeal

6.1.1 The appeal is submitted by Margaret and David Henderson, owners of the dwelling site which is approximately 40m to the west of the appeal site. The grounds of appeal can summarised as follows:

- Appellants have a long association with the area and their dwellinghouse was built before the applicant had significantly developed his dairy enterprise.
- Accept that it is reasonable to expect expansion and improvement in the dairy enterprise to facilitate more sustainable forms of agricultural development however this should not adversely affect residential amenity.
- Permissions 065111546 and 11510172 included conditions requiring a hedge to be planted on the northern and western site boundary during the first planting season following completion of the sheds which were not complied with.

- Hedging is required in the interest of visual and acoustic amenity.
- Movement of cows on the local road 1037-7 is hazardous in terms of traffic, deleterious material giving rise to health and safety risks. This could be eliminated by the installation of cow paths in the developer's fields parallel to the public road.
- Application documentation does not provide details on farmlands leased on a long term basis.
- Tipperary County Council has failed in its duty as a statutory undertaker to apply the law to uphold the rights of all road users.
- Request that the wording of condition 9 equates to that as set out in the planner's report.

6.2 Planning Authority Response

6.2.1 The Planning Authority notes that a typographical error was made in transferring the intended condition no 9 from the planner's report to the notification of decision. In this regard the Planning Authority would welcome the inclusion of condition 9 as per planner's report

"A 1:500 scale landscape plan together with an accompanying planting schedule shall be submitted to the planning authority for written agreement prior to the commencement of development. The scheme shall provide for the planting of a double row of native deciduous trees and hedgerows (as appropriate) along the western boundary and such planting shall be implemented during the first planting season following the commencement of development. The existing trees and shrubs on the site boundaries shall be retained to facilitate the development as indicated on the submitted plans.

Reason: In the interests of visual and residential amenity."

6.3 First Party Response

6.3.1 The first party response notes that the applicant has milked cows at this location for the past 39 years.

- It is common practice within a rural area for cows to be walked along the public road.
- Shed is not intended to cater for expansion rather required to comply with Nitrate directives regarding slurry storage.
- No permanent roadways on rented land and no authorisation to install such.
- No significant disruption arising from movement of cows on the public road. Detour available to traffic as an alternative.
- Photographs supplied by the appellant show soil deposited during rail maintenance works.
- Dispute assertion that milking machines or scrapers are audible from the appellant's dwelling.
- Appellants dwelling is in a rural setting and built in the full knowledge that it was nearby a working farmyard where normal rural farming practice is expected.
- Planting along the western boundary was carried out.
- Appeal is vexatious and will result in significant delay.

6.4 Further responses to cross circulation of Planning Authority response

- 6.4.1 The first party notes that a delay in gaining permission will result in delay in planting. No issue with planting of hedgerows on the western boundary.
- 6.4.2 The Third Party Appellant response indicates support for the inclusion of condition 9 as per planner's report.

7 Assessment

- 7.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposed development and all submissions, I consider the key issues raised in the appeal may be considered under the following broad headings:

- The nature of the proposed development and its impact on the environment and amenities of the surrounding area
- Appropriate Assessment.

7.2 The nature of the proposed development and its impact on the environment and amenities of the surrounding area

7.2.1 The proposed development consists of the rationalisation of an existing dairy enterprise and streamlining of an established agricultural use. I consider that the consolidation of the established existing agricultural use on the site is an appropriate use in this rural area where the predominant land use is agriculture and therefore the principle of development is acceptable. On this basis I consider that it is appropriate to consider the development on its merit in the context of the proper planning and sustainable development of the area.

7.2.2 The proposed development provides a cubicle shed for livestock housing, associated effluent collection tanks and a storage shed and ancillary works. I consider that the the proposal provides for improvement of existing practices and provides for significant environmental improvement to be reasonable. I conclude that subject to good agricultural practice in accordance with the European Union (Good Agricultural Practices for the protection of Waters) Regulations 2014 and compliance with standard environmental conditions the proposed development will not result in water or other environmental pollution and will be in accordance with the proper planning and sustainable development of the area.

7.2.3 As regards the visual impact of the development the site is an established farmyard which is not unduly prominent in the locality and visual impact of the development is not significant. I note that the farmyard has been subject to significant development over the relatively recent past and having regard to the proximity to third party dwellings, I consider it reasonable to require the provision for additional landscaping particularly to the western site boundary to further mitigate visual impact of the development. As regards impact on the adjacent residential dwellings in terms of odour and noise, I find no evidence to support the assertion that significant impacts on established residential amenity will arise as a result of the development.

7.2.4 On the issue of traffic, I note that the movement of animals on the public road is not a planning issue and therefore it is not appropriate to impose conditions as proposed by the third party appellant having regard to the scope of the planning code.

7.3 Appropriate Assessment.

7.3.1 As regards Appropriate Assessment, having regard to the nature and scale of the development and to the proximity to the nearest Natura 2000 site, it is considered that appropriate assessment under the Habitats Directive (92\43\EEC) is not relevant in this case 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.

8.0 CONCLUSION AND RECOMMENDATION

8.1 I have read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising. I recommend that planning permission for the development be granted subject to the following conditions.

RECOMMENDATION

Having regard to the nature and extent of the proposed development and to the history of on-site agricultural activity, to the existing character and pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

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 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 interest of clarity.

2. A minimum of 16 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.

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 (SI No 31 of 2014), 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.

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

4. 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 (SI No 31 of 2014).

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

5. 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 the slatted 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, public health and to ensure a proper standard of development.

6. All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the 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.

7. The site shall be landscaped in accordance with a comprehensive scheme of landscaping details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:
 - (a) A plan to a scale of not less than [1:500] showing:
 - (i) The species, variety, number, size and locations of all proposed trees and shrubs, [which shall comprise predominantly native species such as mountain ash, birch willow, sycamore, pine, oak,

hawthorn, holly, hazel, beech or alder] [which shall not include prunus species]

- (ii) Details of screen planting along the northern and western boundary of the appeal site which shall not include cupressocyparis x leylandii

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from completion of the development shall be replaced within the next planting season with others of similar size and species unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

- 8. The finishes of the roof and side cladding of the proposed structures shall match the existing farm complex.

Reason: In the interest of visual amenity.

Bríd Maxwell
Planning Inspector.
12th March 2017