



An  
Bord  
Pleanála

## Inspector's Report PL11. 247804

### Development

Retain partly constructed agricultural shed to include concrete apron and water tank and permission to complete same with new slurry effluent tank and demolition of old shed and for retention of demolition of old shed.

### Location

Doon, Borris-in-Ossory, Co. Laois.

### Planning Authority

Laois County Council

### Planning Authority Reg. Ref.

16/431

### Applicant(s)

Paul Treacy

### Type of Application

Permission & Permission for Retention

### Planning Authority Decision

Grant subject to conditions

### Type of Appeal

Third Party v. Decision

### Appellant(s)

James & John Coffey

### Observer(s)

None.

### Date of Site Inspection

6<sup>th</sup> April, 2017

### Inspector

Robert Speer

## **1.0 Site Location and Description**

The proposed development site is located in the rural townland of Doon, Co. Laois, approximately 2.0km southeast of the village of Borris-in-Ossory and 2.8km north-northwest of Ballybrophy Train Station, in a primarily rural area characterised by intermittent instances of individual dwelling houses and farmsteads, where it occupies a position along a minor local roadway that extends eastwards beyond the Ballybrophy-Limerick railway line before ultimately terminating in a cul-de-sac south of the M7 Motorway. The site itself has a stated site area of 0.0887 hectares, is irregularly shaped and is presently occupied by a partially constructed steel frame agricultural shed set within an area finished in loose hardcore surfacing / hardstanding. It is accessed via an existing entrance arrangement onto the adjacent laneway which bounds the property to the immediate south and is surrounded by open pasture / agricultural fields to the north, east and west.

## **2.0 Proposed Development**

The proposed development involves the retention and completion of a partially constructed, five-bay agricultural shed (which would appear to have replaced an earlier structure that has since been demolished). The overall design of the shed is typical of agricultural construction and comprises a steel frame support structure with a mono-pitched roof set upon a concrete base with rising concrete walls and profiled metal cladding over same. Permission has also been sought for associated works including the installation of a water tank and the provision of a new slurry effluent tank in addition to the retention of the demolition of the shed which previously occupied the site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Following the receipt of a response to a request for further information, on 1<sup>st</sup> December, 2016 the Planning Authority issued a notification of a decision to grant permission for the retention and completion of the proposed development subject to 11 No. conditions which can be summarised as follows:

- Condition No. 1 – Refers to the submitted plans and particulars.
- Condition No. 2 – Requires the surface water and effluent drainage arrangements on site to accord with the requirements of the Department of Agriculture, Food and the Marine's S129 'Minimum Specifications for Farmyard Drainage, Concrete Yards and Roads', January, 2016.
- Condition No. 3 – Requires the proposed development to be used solely for agricultural purposes.
- Condition No. 4 – Requires the proposed construction to accord with the structural specifications of the Department of Agriculture, Food and the Marine.
- Condition No. 5 – Refers to surface water drainage.
- Condition No. 6 – Refers to consultation with the ESB as regards overhead power lines.
- Condition No. 7 – Requires any external lighting to be cowled and directed away from the public roadway.
- Condition No. 8 – Requires the public road etc. to be maintained in a clean and tidy condition during the course of the construction works.
- Condition No. 9 – Refers to waste management.
- Condition No. 10 – Requires adherence to the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014, S.I. 31 of 2014, and any such amendments as may be made to those regulations.
- Condition No. 11 – Prohibits any landspreading from encroaching on adjacent properties.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports:**

States that the proposed development is located in a rural area and will not seriously injure the amenities of the area, will not be prejudicial to public health, will be

acceptable in terms of traffic safety, and will accord with the proper planning and sustainable development of the area, subject to conditions.

3.2.2. Other Technical Reports:

*Executive Scientist:* No objection subject to conditions.

*Planning Enforcement:* States that an enforcement notice has been served on the registered owner of the application site which requires the demolition of the shed in question and the removal of the hardstanding area with the subsequent restoration and landscaping by a specified date. However, it is also stated that an extension of 3 No. months for compliance with the requirements of the enforcement notice was granted on condition that a valid planning application was received on or before 10<sup>th</sup> August, 2016.

3.2.3. Prescribed Bodies:

None.

### 3.3. **Third Party Observations**

A single submission was received from the appellants and the principle grounds of objection contained therein can be summarised as follows:

- The proximity of the proposed development to adjacent lands.
- The risk of fire damage to the boundary fence.
- Concerns with regard to animal welfare / disease control.
- The inadequacy of the site notice.
- Concerns with regard to the storage of slurry.
- The unauthorised removal of a boundary hedgerow.

## 4.0 **Planning History**

None.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Laois County Development Plan 2011-2017:-**

##### Chapter 3: Development Plan Strategy:

###### Section 3.3.2: Rural Economy

##### Chapter 7: Economic Development:

###### Section 7.11: Land-Based Rural Economy and Diversification:

It is the policy of the Council to

*EC 7 / P32:* Reconcile the need for resource-based economic activities to conduct a reasonable operation and the needs of residents in rural areas to access a good quality of life.

*EC 7 / P33:* Have regard to Landscape Character Assessment (attached in Appendix 6), as well as more general Planning considerations, such as transport, environmental sensitivities, in its determination of Planning applications.

###### Section 7.12: Agriculture:

It is the policy of the Council to:

*EC 7 / P34:* Support the expansion and diversification of the agricultural sector into areas such as forestry, alternative energy enterprises, tourism amenities, etc. and ensure that any plan or project associated with the economic development of lands which has the potential to significantly affect a Natura 2000 site is appropriately assessed in accordance with Article 6 of the Habitats Directive in order to avoid adverse impacts on the integrity of the site.

*EC 7 / P35:* Support Commercial development associated with agriculture, such as the processing of agricultural commodities for food, drinks and other value-added products and the sale of commodities and value-added produce from the farm subject to environmental, traffic and general Planning considerations.

*EC 7 / P37:* Support the agri-food industry to promote local food production.

## 5.2. Natural Heritage Designations

None.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The site layout plan does not accurately detail the location of those buildings which previously occupied the application site.
- The applicant has chosen not to identify the locations of either the proposed development or those buildings which previously occupied the site by reference to OSI mapping as this would clearly indicate that the subject proposal will encroach upon lands outside of his ownership. In this regard, it is also submitted that the accompanying OSI mapping clearly shows that the scale and location of those structures on site which have since been demolished are at complete variance with those detailed in the submitted site layout drawing.
- Whilst Section 34(4)(a) of the Planning and Development Act, 2000, as amended, provides for the imposition of conditions regulating development or the use of adjoining lands, any such lands must be within the control of the applicant. In the subject instance, the applicant does not retain any control over the adjoining lands which are in the ownership of the appellants.
- The submitted drawings do not accurately detail the positioning of the proposed development or those buildings which previously occupied the site relative to OSI coordinates.
- There are concerns that the proposed development poses an unacceptable risk as regards the potential for the spread of disease whilst consideration should also be given to the need for the safe storage of feed for livestock etc. and any associated pollution risk.

- No cognisance has been taken of the safety concerns raised by the appellants with regard to the proximity of the proposed construction to a national road and the potential for any associated lighting within the site to result in unacceptable glare to passing traffic.
- The construction of the proposed development does not comply with the relevant standards / codes of practice set by the Department of Agriculture.
- Due to the substandard nature of the submitted drawings, there are concerns that the proposed development will result in the encroachment / infringement of the appellant's property.

## 6.2. Applicant's Response

- The plans and particulars lodged with the Planning Authority were subjected to the greatest of scrutiny by the relevant officials and no issues arose with regard to the location of the development as detailed on same. It is further submitted that there is no encroachment of adjoining lands outside of the applicant's ownership and in this regard the Board is referred to the accompanying folio and land registry details.
- With regard to the reference in the grounds of appeal in relation to the imposition of conditions regulating development or the use of adjoining lands, it is submitted that no such conditions have been imposed by the Planning Authority.
- The drawings which have accompanied the grounds of appeal are rather convoluted and it is unclear what the appellants are attempting to establish through the submission of same. In any event, cognisance must be taken of the fact that the applicant is building on his own land as evidenced by the accompanying land registry details and that the centreline of the boundary hedgerow is the dividing property line.
- In relation to the appellants' concerns that the proposed development poses an unacceptable risk as regards the potential for the spread of

disease, it is submitted that the situation has not changed over the years and accords with standard agricultural practice.

- The lighting of the proposed shed will be minimal and any lights from passing traffic on the motorway will not impact on the appellants.
- Schedule 1 of the notification of the decision to grant planning permission clearly outlines the relevant standards etc. as regards the construction of agricultural buildings.
- The subject appeal is considered to be of a vexatious nature as the Planning Authority has raised no concerns with regard to the submitted plans and particulars.
- The accompanying land registry map details the property boundaries and there has been no interference with the appellants' right of way etc.

### 6.3. **Planning Authority's Response**

None received.

## 7.0 **Assessment**

### 7.1. **The Principle of the Proposed Development:**

On the basis that the development in question is intended for agricultural purposes, and as the subject site is located within a rural area where the predominant land use is agriculture (on lands which would appear to have been previously occupied by another agricultural structure since demolished), I am of the opinion that agriculturally-related developments such as that proposed for retention and completion are an inherent part of rural life and should generally be accommodated within such areas. Accordingly, on the basis of the foregoing, and in light of the scale and the intended use of the proposed development for agricultural purposes, I am of the opinion that the development proposed is acceptable in principle at this location.

### 7.2. **The Accuracy of the Submitted Drawings:**

Having conducted a site inspection, and following a review of the submitted plans and particulars, in my opinion, it is readily apparent that the submitted site layout



plan does not accurately depict the existing construction on site which is proposed for retention and completion. In this regard I would advise the Board in the first instance that the site plan as submitted does not correctly detail the positioning of the existing shed relative to the irregular alignment of the northern site boundary. More specifically, it is clear from a site inspection that part of the adjacent field to the immediate north of the application site projects southwards into a point and that the ground floor plan of the existing shed has been constructed so as to physically 'fit' around same, however, whilst the submitted site plan shows the irregular floor plan of the construction proposed for retention and completion, it does not accurately detail the position of the aforementioned northern boundary (or the projection of the appellants' adjacent lands) relative to same. Accordingly, this discrepancy in the submitted site plan would appear to have given rise to the appellants' concerns that the proposed development will either encroach into or over their lands.

In addition to the foregoing, there are further discrepancies in the submitted drawings given that the overall length of the shed in question (excluding the proposed addition of the slurry tank) is detailed as 24.3m on the floor plan whereas measurement from the site layout plan indicates a corresponding dimension of 22m (excluding the slurry tank). Similarly, other details of the proposed shed construction as detailed on the floor plan do not correspond with measurement of the equivalent dimensions on the site plan.

Therefore, in the absence of a complete set of drawings which accurately depict the development proposed for retention and completion, in my opinion, it is not possible to fully assess the planning implications of the subject proposal, with particular reference to the potential for any encroachment / infringement of adjacent property.

### 7.3. **Impact on Adjacent Property:**

Having established that there are a number of discrepancies in the submitted drawings as regards the siting of the proposed development relative to the site boundary shared with the adjacent lands to the immediate north, I would acknowledge the legitimacy of the concerns raised in the grounds of appeal that the proposed construction could potentially encroach into or over the appellants' property. In this respect I would reiterate that the adjacent field to be immediate north

of the application site projects southwards into a point and that the existing building has seemingly been constructed in such a manner so as to physically 'fit' around same in an effort to avoid any infringement of the property line which would appear to be defined by an existing timber post and rail fence. However, if the existing shed on site is to be completed in accordance with the submitted drawings, it is clear that the eaves line of the roof along the rear elevation of the structure will overhang the lands below, including part of the appellants' property. Therefore, on the basis of the available information, it would appear that the proposed development, if completed in accordance with the submitted plans and particulars, will result in the encroachment of the adjacent lands which are outside of the ownership / control of the applicant.

7.4. **Appropriate Assessment:**

Having regard to the nature and scale of the development in question, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

7.5. **Other Issues:**

With regard to the proximity of the proposed development to the M7 Motorway, I am unconvinced that the subject proposal will give rise to any impact on traffic safety along same (subject to the appropriate cowling and orientation of any external lighting).

Furthermore, it is my opinion that matters pertaining to the construction and operation of the proposed development (including adherence to the relevant standards / codes of practice set by the Department of Agriculture etc.) can be satisfactorily addressed by way of condition in the event of a grant of permission.

## 8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the retention and completion of the proposed development for the reasons and considerations set out below:

## 9.0 Reasons and Considerations

1. It is considered that the development proposed for retention and completion, by reason of its proximity to the northern site boundary, would encroach over the adjoining property thereby seriously injuring the amenities of that property and, therefore, would be contrary to the proper planning and sustainable development of the area.
2. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the application has been made in accordance with the requirements of the Planning and Development Regulations, 2001, as amended, in that the Board is not satisfied that the details and drawings submitted with the planning application accord with the requirements of article 22 and 23 of the Regulations. In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the retention and completion of the proposed development.

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Robert Speer  
Planning Inspector

11<sup>th</sup> April, 2017