



An
Bord
Pleanála

Inspector's Report

PL08.248036

Development	Retention of a cattle shed with underground slurry tank as constructed and permission to extend same to provide an easy feed slatted unit with underground slurry tank.
Location	Skehanierin, Listowel, Co. Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/1025
Applicant(s)	Listowel Livestock Market Limited
Type of Application	Retention and Planning Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Mary O'Sullivan
Observer(s)	None.
Date of Site Inspection	27/04/2017.
Inspector	A. Considine

1.0 Site Location and Description

- 1.1. The subject appeal site has a stated area of 0.27ha and is located approximately 1.5km to the east of the town of Listowel, Co. Kerry. Access to the site is over the N69 in proximity to its junction with the R523, also known as Bolton's Cross Roads. The site is set back from the public road and is accessed via an existing access track which runs from the N69 to the site for a distance of approximately 135m.
- 1.2. The site itself is elevated, rising from the public road towards the rear of the wider field. The existing shed on the site is prominent given the elevated nature of the land and the overall area, notwithstanding the proximity to Listowel, has a rural feel. There are a number of one off houses creating ribbons from the site towards the town.
- 1.3. The applicant appears to own the surrounding fields and the subject site comprises a small area of this wider landholding.

2.0 Proposed Development

- 2.1. Retention permission is sought for the existing cattle shed with underground slurry tanks as constructed, which has a stated floor area of 88.6m². The existing shed has an overall height of 5.2m and is constructed using a mix of concrete and metal cladding. It is noted that this shed has been in existence for a many number of years.
- 2.2. Further to the above, permission is being sought to extend the existing shed to provide an easy feed slatted unit with an underground slurry tank with a stated floor area of 126.2m². The extended shed will be constructed in similar finishes to the existing shed and will include an underground slurry tank which runs the full length of the shed.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to compliance with 10 conditions, standard in the main.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Report of the PA considered the proposed development in terms of compliance with the requirements of the Kerry County Development Plan, 2015-2021, the planning history associated with the site, visual impact, road safety and traffic concerns, environmental issues, residential amenity and third party submissions. In this regard, further information was sought with regard to a number of issues. Following receipt of the response to the FI request, the Planning Report recommended that permission be granted subject to conditions.

In terms of the third party submission in relation to the proposed development, the report notes that the proposal was discussed with the County Solicitors Office. The details of the discussion are not presented on the file, but the decision to grant issued.

3.2.2. Other Technical Reports

Roads Section: No objections to the proposed development.

KNRDO: No objections to the proposed development.

Operations, H&S: No comments

3.3. Prescribed Bodies

TII: No observations in relation to the proposed development.

3.4. Third Party Observations

Ms. Mary O'Sullivan submitted an objection to the proposed development. The issues raised are summarised as follows:

- The site never had any drainage.
- There has been deepening of a longitudinal surface water culvert which will direct more water onto objectors already flooded property.

- Kerry County Council are a named defendant at the centre of a High Court Case¹ in relation to the illegal connection of and intensification of a private outlet to objectors farm which has led to flooding, damage, stress and loss of earnings.

4.0 Planning History

4.1. Application site

None.

4.2. There is significant planning history on adjacent lands to the subject site, not related.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015-2021 :

The subject site is located within an area which is zoned Rural General in the Kerry County Development Plan and in this regard, Section 3.3.2.1 is relevant. Such areas of the county are considered to be the least sensitive landscapes and have the ability to absorb a moderate amount of development without significantly altering their character.

Objective ZL-1 of the Plan deals with landscape protection and provides that it is the objective of the Council to 'protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people'e lives.' Section 12.3 of the plan provides that 'In the preparation of zoning designations for the County, the Planning Authority considered not only the quality of a landscape itself, but also the level of existing development and the ability of the landscape to absorb further development without altering its character to an unacceptable degree.'

Chapter 13 of the CDP deals with Development Management – Standards & Guidelines, where section 13.12 deals with Agricultural Buildings. While the Plan requires that the following will be taken into account in all proposals for new agricultural buildings, I am satisfied that it is relevant in the current instance also:

- Proximity to adjacent dwellings.

¹ The Board should note that no findings or orders have issued with regard to this cited case.

- The rural character of the area.
- Utilisation of natural landscape and land cover as screening.
- Waste management in terms of storage and disposal.
- Environmental carrying capacity.
- It is a requirement that agricultural buildings are designed, located and orientated in a manner that will minimise their environmental impacts. A number of exemptions apply to farm buildings as set out in Part 3 of the Planning and Development Regulations 2001 - 2013. These exemptions will generally only apply to farms in rural locations.
- All agricultural development that results in manure, soiled water and slurry etc shall comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 [S.I. No. 610 of 2010], as amended by European Communities (Good Agricultural Practice for Protection of Waters)(Amendment) Regulations 2011 [S.I. No. 125 of 2011], and/or any substituting or amending regulations.

5.2. **Natural Heritage Designations**

None on the site. The River Feale which constitutes part of the Lower River Shannon SAC is located approximately 0.5km to the south of the site and across the N69 and railway tracks. There is no hydrological connection between the subject site and the river.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

There is one appellant associated with this proposed development and the grounds of appeal are similar to those issues raised in the course of the PAs assessment of the proposed development. These grounds are summarised as follows:

- The appeal is lodged as it is believed that the development will increase the flow of water onto already flooded property.
- The PA sought details of the surface water disposal method. The response said where the water would be collected, but not where it would eventually go.

- Conditions referencing disposal of clean rainwater to a soak pit or watercourse are a concern as there is no watercourse from the property. There is a concern that water from the property will be directed via an illegal drainage system to the appellants property. This is the subject of court action.
- It is requested that the appeal be upheld until the court action has run its course.

6.2. **Planning Authority Response**

The PA has not responded to this appeal.

6.3. **Observations**

None

6.4. **Further Responses**

The first party submitted a response to the third party appeal but was late.

7.0 **Assessment**

7.1. Having considered the detail of the planning application and the submission in relation to the appeal as well as the nature of the planning application for the retention of an agricultural shed, which is clearly located on a long established farm yard, and given the rural location and the applicants involvement in farming, I consider that the following issues are relevant:

- Principle of the development and Compliance with the Development Management – Standards & Guidelines contained in the Development Plan
- Issues raised in the appeal.
- Other Issues
- Appropriate Assessment.

7.2. **Principle of the development and Compliance with the Development Management - Standards & Guidelines contained in the Development Plan:**

7.2.1. The subject site is located on the outskirts of the town of Listowel and comprises a small area of a much larger landholding in this area. There is an existing agricultural building on the site and it is clear that the site has been used for agricultural

purposes for many years. In principle, I have no objection to the retention of the existing shed on the site or the proposed extension, the subject of this appeal.

7.2.2. In terms of compliance with Chapter 13 of the County Development Plan, Development Management – Standards & Guidelines, and while I acknowledge that said guidelines relate primarily to new agricultural buildings, I consider the following is relevant:

- Proximity to adjacent dwellings – having regard to the existence of an agricultural building on this site for many years, together with the distance from the site to the adjacent residences, I am satisfied that the proposed development is acceptable in this instance.
- The rural character of the area – the subject site is located on the edges of the town of Listowel where the primary developments are one off type houses in ribbons along the N69. The subject proposal lies within a small existing farm yard on a larger landholding and I am satisfied that the proposal is acceptable in this instance.
- Utilisation of natural landscape and land cover as screening – the subject site is located on an elevated section of the overall landholding and there is little in the way of existing vegetation to screen the existing, or proposed, structure. The proposed structure however, will be no higher than the existing shed on the site and the Board will note the landscaping proposals presented by the applicant in response to the FI request. I am satisfied that an appropriate condition relating to landscaping of the site is adequate to address any potential visual amenity issues which may be perceived as arising. That said, I am satisfied that no visual amenity issues will arise.
- Waste management in terms of storage and disposal – the proposed development seeks to provide enlarged capacity for the storage of waste within the buildings. The proposed development application made no reference to stock numbers, existing or proposed and details of the overall landholding available for spreading has not been provided. On date of site inspection, there were no animals in the buildings or on any of the surrounding fields and as such, I must presume that this is not the only yard used by the Listowel Livestock Market. While the details of the stock numbers

and types using the agricultural buildings would be welcomed, for clarity in relation to the sizing of the proposed slatted house, I accept that the application for the construction of a slatted shed is in an effort to improve stock management, and slurry storage, on this holding. I am satisfied that this matter can be appropriately dealt with by way of condition.

- Environmental carrying capacity – I am satisfied that the development is acceptable.
- It is a requirement that agricultural buildings are designed, located and orientated in a manner that will minimise their environmental impacts. A number of exemptions apply to farm buildings as set out in Part 3 of the Planning and Development Regulations 2001 - 2013. These exemptions will generally only apply to farms in rural locations.
- All agricultural development that results in manure, soiled water and slurry etc shall comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 [S.I. No. 610 of 2010], as amended by European Communities (Good Agricultural Practice for Protection of Waters)(Amendment) Regulations 2011 [S.I. No. 125 of 2011], and/or any substituting or amending regulations - I am satisfied that this matter can be adequately addressed by way of condition.

7.2.3. In conclusion, I am satisfied that the development as proposed can be adequately accommodated on the subject site without undue risk to the general or visual amenities of the area. In addition, I am satisfied that, subject to compliance with conditions, the development will be an acceptable form of development from an environmental point of view as it relates to appropriate waste management.

7.3. **Issues raised in the third party appeal:**

7.3.1. The third party appellant has requested that the Board uphold the appeal until such time as the ongoing court action has been finalised. The Board will note that to date, there are no findings or orders available in relation to the cited court proceedings. The proceedings relate to the construction of 'an illegal drainage system to the appellants property'. No further details of the proceedings have been given and I am satisfied that the matter is a civil issue. I also note that the subject applicants are not a party to the court action.

7.3.2. In any case, the Board will note the proposals of the applicant to deal with surface water arising from the proposed development. In response to the FI request, the applicant advised that surface water from the site will be fed to gulleys connected to stone sumps. I am satisfied that this is acceptable having regard to the nominal scale of the proposed development. The inclusion of an appropriately worded condition in any grant of planning permission will be adequate to ensure no surface water, arising within the proposed development site, discharges to third party lands outside the site or onto the public road.

7.3.3. Finally, I note that the granting of a planning permission does not automatically indicate a right to build, and all other legal matters / issues are required to be addressed, including compliance with Department of Agriculture, Fisheries & Food regulations as well as EU regulations regarding protection of waters. I consider that a decision can be made in this instance.

7.4. **Other Issues:**

7.4.1. Roads & Traffic:

The subject site is located off the N69, approximately 1.5km to the east of the town of Listowel. There is an existing, and long established access to the subject site and adequate sight distances are available in both directions at the entrance. The Board will also note that the Roads section of Kerry County Council has advised no objection to the proposed development. I am satisfied that there are no roads or traffic issues arising in this instance.

Visual Impacts:

I have addressed the potential for landscaping to minimise any potential visual impact arising from the proposed development. The Board will note that there are no landscape designations relating to this area of Co. Kerry which would be impacted upon by the proposed development and I note that no designated Scenic Views or Viewing Points exist in the vicinity of the application site. The building itself is set well back from the public road, approximately 150m, and subject to appropriate landscaping of the site, I am satisfied that no visual impacts will arise.

7.5. **Appropriate Assessment :**

7.5.1. Having regard to the nature and modest scale of the proposed development, on an area of land which has already been subject to hardstanding, to the location of the

site within a semi-rural environment, and to the separation distance to any European site, no Appropriate Assessment issues arise 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 Recommendation

8.1. I recommend that planning permission be granted for the proposed development, subject to compliance with the stated conditions, and for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the location of the site in an existing farmyard in an agricultural setting and to the pattern of development in this semi-rural area, 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, 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 existing shed on the site shall be retained, and the extension of same, shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 22 day of December 2016, 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. 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 occupation of the slatted shed. The management schedule shall be in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014, and shall provide at least for the following:

- (a) Details of the number and types of animals to be housed.
- (b) The arrangements for the collection, storage and disposal of slurry.
- (c) 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.

3. Slurry generated by the proposed development shall be disposed of by spreading on land or by other means acceptable to the planning authority. The location, rate and time of spreading (including prohibitive 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.

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

4. 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 the interest of orderly development by reserving the capacity of effluent and storage tanks for their specific purposes.

5. Within one month of this permission, details of the colour of all the external finishes to the proposed development shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

6. Notwithstanding the provisions of the Planning and Development Regulations 2001, no further agricultural buildings shall be erected on the site without a prior grant of planning permission.

Reason: To enable the planning authority to assess the impact of such development on the area.

7. The landscaping scheme as submitted to the planning authority on the 22nd day of December, 2016 shall be carried out within the first planting season following receipt of this grant of planning permission.

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 five years from the 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.

A. Considine
Planning Inspector
15th May 2017