



An  
Bord  
Pleanála

## Inspector's Report PL92.248157

### Development

Permission for the retention of (i) cubicle shed incorporating straw area with slatted tank feeding area (ii) isolation boxes shed (iii) silage slab extension. Permission is sought for silage slab extension and all associated site works.

### Location

Knockskagh, Clerihan. Clonmel, Co Tipperary.

### Planning Authority

Tipperary County Council.

### Planning Authority Reg. Ref.

16/601004.

### Applicants

Larry Molan.

### Type of Application

Permission.

### Planning Authority Decision

Grant Permission subject to conditions.

### Appellant

John Ryan and Joanne Trehy Ryan.

### Observer

None

### Date of Site Inspection

16<sup>th</sup> June 2017.

### Inspector

Bríd Maxwell.

## **1.0 Site Location and Description**

- 1.1. The appeal site which has a stated area of 0.7 hectares is located within a rural area approximately 1.4km north of Poulmucka, 5km south east of New Inn, 4km west of Ballyclerihan, 9.5km northwest of Clonmel and 7km north east of Cahir, in County Tipperary. The site which comprises an established farmyard incorporating a family farmhouse and outbuildings is located on the western side of a local road which runs north of the R687 New Inn to Clonmel Road. There are a number of individual dwellings in the vicinity including three directly opposite to the east of the appeal site.
- 1.2. 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 retention of cubicle shed incorporating straw area with slatted tank feeding area 659 sq.m (ii) isolation boxes shed 51.3 sq.m (iii) silage slab extension 18mx13m. Permission is also sought for a silage slab extension 18mx 13m and all associated site works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated 17<sup>th</sup> February 2017 Tipperary County Council decided to grant permission subject to 4 conditions including Condition 3 requiring that the height of the silage stored inclusive of plastic and tyres on the silage slab extension\* shall not exceed 4m in height. Plastic on silage slab shall be securely fixed and indefinitely maintained so as not to give rise to noise nuisance. Condition 4 required payment of a development contribution of €1,089.

### **3.2. Planning Authority Reports**

The initial report of the area planner noted third party concerns. Concern was expressed with regard to the height of the silage slab and proximity to the public

road. It was noted that the cubicle housing intersects with an area deemed at risk from pluvial flooding on OPW floodmapping and therefore flood risk assessment should be submitted. Further information required regarding mitigation of third party impact, issue of flood risk and clarification regarding runoff.

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

Submissions by the third party appellant to the local authority object to the development noting negative visual impact, smell, noise and disturbance from plastic tyres and activity, health and safety issues, run off, devaluation of residential property. Retrospective nature of application represents an infringement of third party rights.

### **4.0 Planning History**

- 06/1076 Permission granted for an easy feed unit incorporating slurry tanks with slats laid on, cubicle beds and scraper passages, lie back area, soiled water and associated works.
- TUD 16/135 Warning letter issued regarding unauthorised development.

### **5.0 Policy Context**

#### **5.1 Development Plan**

The South Tipperary County Development Plan 2009 as varied refers.

Relevant policies include:

- Policy ECON 13: Protecting Agricultural Practices.  
Where new developments are proposed, the Council will seek to balance the need for rural based economic activity with the need to protect promote and

enhance the viability and environmental quality of existing farms., and high quality agricultural land. The council will continue to support and promote farming in South Tipperary encouraging the establishment / expansion of new enterprises where it is appropriate to do so.

- Policy INF 15: Agricultural Waste. The Council will require all agricultural organic waste to be recovered by land spreading and will seek improvement in the management of all agricultural organic waste by requiring the provision of a satisfactory nutrient management plan where intensive agricultural development is proposed.

Development Management Standards are set out at chapter 9. 9.2.1

Agricultural Development sets out requirements in respect of provision for run off. adequate storage of effluent, landscape and visual impact for new buildings. The Council will have regard to Teagasc guidelines on good farming practice.

## **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 Lower River Suir SAC is located 6km to the west of the site.

## **6 The Appeal**

### **6.1 Grounds of Appeal**

6.1.1 The appeal is submitted by John Ryan and Joanne Trehy Ryan neighbouring residents. The grounds of appeal are summarised as follows:

- Structures developed on site without invoking proper procedures, infringement of third party rights.
- Silage pit directly opposite dwelling entrance especially objectionable.
- Noise, odour, run off and health and safety risk due to proximity to road.
- Devaluation of property.
- Developer unwilling to mitigate third party concerns,

### **6.2 Planning Authority Response**

6.2.1 The Planning Authority response asserts that the application was considered on its merit and the retrospective nature of the application did not prejudice the assessment and recommendation. Conditions attached to permission will address concerns regarding visual impact and noise nuisance and drainage. Note the pre-existence of a silage slab at this location as identified in application 06/1076. Relevant statutory procedures as set down under the Planning and Development Act 2000 will apply in respect of follow through and monitoring of condition compliance.

## **6.3 +First Party Response**

6.3.1 The submission from Agri Design and Planning Services on behalf of the first party addresses the grounds of appeal as follows:

- First party purchased this land in 1996 and since then has built up a successful dairy.
- Measures to mitigate impact on neighbouring dwellings were taken in January 2016 with the planning of a roadside boundary hedge.
- Third party appellant's house permitted in 2006 across from the established farm yard which at that time incorporated a silage slab at this location.
- 2016 was an above average year on grass growth and the volume of grass was underestimated resulting in an abnormally high silage slab. Condition of permission restricts height to 4m and first party is willing to adhere to this condition.
- Existing roadside boundary is 2m high and there is a laurel hedge planted in January 2016 predicted to be at the height of 3- 3.2m in summer 2017.
- A native blackthorn, holly white thorn hedge with a semi mature tree has been planted to strengthen the boundary ditch.
- Drain to be upgraded with silage pit extension

## **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 in the context of the proper planning and sustainable development of the area. Whilst the third party appellant is critical of the retrospective nature of the application the planning system provides for such in order to facilitate the regularisation of unauthorised development, where appropriate. It is therefore in order to consider the application on its merit. In this regard I would concur with the planning authority that the pre-existence of the structures on site does not prejudice the assessment of the application in the context of proper planning and sustainable development.

7.2.2 The proposed development provides a cubicle shed for livestock housing, associated effluent collection tanks and isolation box shed and ancillary works. I consider that the proposal provides for improvement of existing practices and provides for significant environmental improvement and is therefore 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 and notwithstanding the substantial scale of the cubicle shed structure is not unduly prominent in the locality. The isolation boxes shed is adjacent to and well integrated with existing structures. I note the photographs submitted by the third party appellant and the acknowledgement of the first party regarding the previous height of

the volume and height of silage slab. This is evidently the most objectionable element of the development from the third party appellant's perspective. The extension of the slab which will result in reduced height and a condition limiting the height is in my view reasonable. A requirement to good agricultural practices will in my view appropriately mitigate impact on amenities beyond the site boundaries. I note the additional landscaping provided to the roadside boundary and the maturation of this will 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 flood risk the flood risk assessment concludes that on the basis of visual inspection of the land and absence of knowledge of history of flooding in the area that the perceived risk from flooding is not an issue as the land is free draining with no evidence of flooding. Site suitability test carried out shows the characteristics of the soil to be free draining. On the basis of assessment, it is asserted that the site is within flood zone c the lowest risk of flooding. I note that as advised in Circular Letter PL2/2014 the OPW pluvial flood maps are indicative and not necessarily locally accurate and therefore the development is acceptable in terms of flood risk.

### **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 for retention and permission be granted subject to the following conditions.

### **RECOMMENDATION**

Having regard to the nature and extent of the development proposed for retention and the proposed development and to the history of on-site agricultural activity, to the existing character and pattern of development in the vicinity, if it is considered that, subject to compliance with the conditions set out below, the development proposed for retention and 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 as amended by the further plans and particulars submitted on the 26<sup>th</sup> January 2017 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. The height of silage stored (inclusive of plastic and tyres) on the silage slab shall not exceed 4m in height when measured from the base level of the silage slab.

**Reason:** In the interest of visual amenity.

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. 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. 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. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Bríd Maxwell  
Planning Inspector.  
19<sup>th</sup> June 2017