



An  
Bord  
Pleanála

## Inspector's Report PL01.248245

### Development

Retention and installation of grain dryer, permission for installation of acoustic silencers to fans on grain dryer and associated secondary steel frame support.

### Location

Thomas Traynor Street, Tullow Co. Carlow.

### Planning Authority

Carlow County Council

### Planning Authority Reg. Ref.

16/310

### Applicant(s)

Charles R. Wynne Ltd

### Type of Application

Permission

### Planning Authority Decision

Grant

### Type of Appeal

Third Party-v-Grant

### Appellant(s).

James & Maria Ansbro & Others

### Date of Site Inspection

22<sup>nd</sup> June 2017

### Inspector

Colin McBride



## **1.0 Site Location and Description**

1.1 The appeal site, which has a stated area of 0.49 hectares, is located in the centre of Tullow, Co. Carlow. The appeal site is located on the south western side of Thomas Traynor Street and is accessed from Hawkins Lane, which forms a junction with Thomas Traynor Street to the east of the site. The site is occupied by an existing agri-business (grain depot). There are a number of existing structures on site including a site office, grain silos, sheds and a grain dryer. Adjoining uses include existing playing pitches to the south west of the site, on the opposite side of Hawkins Lane to the south east of the site are terraced dwellings and commercial uses, to the north east and on opposite side of Thomas Traynor Street are commercial uses including a petrol station and shop and to the north west is a commercial unit. The boundaries of the site are defined by wire fencing along Thomas Traynor Street, the north western boundary and palisade fencing along Hawkins Lane. The appellants' dwellings are located on Barrack Street, which is to the north east/ north of the site and back onto the northern bank of the River Slaney.

## **2.0 Proposed Development**

2.1. Permission is sought for the retention of a grain dryer on site as a replacement dryer (it is noted that permission was originally granted for a dryer and installed on the basis of permission ref no. CW6546). Permission is also sought to install acoustic silencer fans on the existing grain dryer and all secondary steel frame supports. The grain dryer for retention is located with an existing yard adjacent grain silos and has an overall ridge height of just over 20m.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission granted subject to 12 conditions. Of note are the following conditions...

Condition no. 2(b): Permission is a temporary period of 3 years.

Condition no. 3: Dust deposition emission limit value applied.

Condition no. 4: Noise emission limit values applied.

Condition no. 6: Operating hours of the grain dryer restricted.

### **3.2. Local Authority and External reports**

3.2.1. Water (04/11/17): No objection.

3.2.2. Irish Water (08/11/16): No objection.

3.2.3. Environment (11/11/16): Clarification required regarding impact of specific noise levels on otter disturbance, clarification regarding noise monitoring data and the specifications of the dryer as well as mitigation measures in regards to where noise impact exceeds evening limits at two receptors.

3.2.4. Planning report (09/12/16): Further information required including a revised assessment regarding the Slaney River SAC and the issues raised by the Environment Section.

3.2.5. Environment (20/02/17): No objection subject to conditions including dust suppression measures, noise emission limit and operating hours.

3.2.6. Development Applications Unit (28/02/17): Having reviewed the Natura Impact Statement it is concluded that the proposal is not likely to impact on the Slaney River Valley SAC (site code 000781) and the Department have no further comment to make.

3.2.7. Planning Report (02/03/17): It was considered that the proposal would be unlikely to have any significant effects on the River Slaney SAC or any European site. It is considered that subject to the mitigation measures proposed and subject to conditions regarding operating hours, noise levels and dust suppression measures, the proposal would be acceptable in regards to the amenity of adjoining properties. A grant of permission was recommended subject to the conditions outlined above.

## **4.0 Planning History**

4.1 15/262: Permission refused to retain grain dryer. One reason for refusal...

1. *The Planning Authority is not satisfied, on the basis of the lack of detail submitted in reports, drawings and detail in connection with the planning application that the development would not negatively impact on the; (i) residential amenities of the area by virtue of noise, dust and general disturbance and (ii) the Slaney River cSAC in terms of disturbance of the qualifying species Otter and would, therefore, not be in accordance with the proper planning and sustainable development of the area.*

4.2 CW 7284: Permission granted for alterations to boundary walls.

4.3 CW6546: Permission granted for erection of a grain dryer.

4.4 CW5784: Permission granted for erection of a security fence.

4.5 CW1245: Permission granted for erection of grain dryer and cleaner.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1 The relevant Development Plan is Tullow Local Area Plan 2010-2016. The site is zoned Town Centre Activities. There is a draft Tullow Local Area Plan 2016-2022 and the site is zoned Town Centre Activities under such.

## **6.0 The Appeal**

### **6.1 Grounds of appeal**

6.1.1 A third party appeal has been lodged by...

James & Maria Ansbro, 'Bus Os Cionn', Barrack Street, Tullow, Co. Carlow.

Jennifer Wallace, Barrack Street, Tullow, Co. Carlow.

Bridget & Denis Murphy, 'Upper Mills', Barrack Street, Tullow, Co. Carlow.

Michael Murphy, Barrack Street, Tullow, Co. Carlow.

Pat & Caitriona Byrne, 'Cois Abhainn', Barrack Street, Tullow, Co. Carlow.

- The grounds of appeal outline the background to the case and the history of complaints regarding noise nuisance from the proposed development.
- The appellants note that the grain dryer subject to retention has generated significant noise and dust disturbance during operation and such has impacted adversely on residential amenity. The appellants are concerned that the measures proposed to reduce noise levels are insufficient to alleviate this impact.
- It is noted that retention permission was refused previously for the grain dryer and it was still operated anyway with concerns that the applicants would not comply with any conditions imposed if granted.
- The appellants note the Planning and Development Acts 2001-2015 including the section that notes that a planning authority cannot accept an application for retention for any development that would have required an environmental impact assessment, a determination as to whether EIA was required or an appropriate assessment under the Habitats Directive. The appellants note that this applies in this case.
- The appellant noted a conflict of interest regarding enforcement issues.
- It is considered that the conditions on operating hours allow for unreasonable hours.
- In regards for requirement for noise monitoring it is noted that such is likely to be carried out by a company employed by the applicants with questions raised regarding their independence or reliability.

## 6.2 Responses

### 6.2.1 Response by Carlow County Council.

- It is considered based on established use and subject to the conditions imposed the proposal would be acceptable.
- It is noted that the PA had regard to relevant Development Plan and guidance and have attached strict conditions to ensure the development operate within permissible noise and dust levels.

### 6.2.3 Response by Malone O'Regan on behalf of the applicants, Charles Wynne Ltd.

- The applicants confirm the history of development on site noting that there was a grain dryer permitted at this location previously and the proposal replaces such.
- The proposal is not of sufficient scale, location or development type to warrant an Environmental Impact Assessment.
- A Natura Impact Statement was submitted and it was concluded that Appropriate Assessment screening was required. It was concluded that the proposal would have no significant effects on the River Slaney SAC.
- Dust monitoring was carried out and the levels were considered to be within acceptable limits.
- A noise assessment was carried out and it is concluded that with the acoustic silencers noise level would be within acceptable limits.
- The response includes a submission directly from the applicants Charles Wynne Ltd that notes the position of the grain dryer for retention is the same as a previous one granted permission in 1982.
- The grain dryer is operated during harvest period (July-September)

- It is noted that the applicant is unable to implement acoustic mitigation measures until planning is finalised and that they accept all conditions restricting operating hours, monitoring, etc.
- The applicants note the importance of grain drying on site in terms of employment and feasibility of the business.

### **6.3 Submission**

#### 6.3.1 Submission at application stage were made by...

Bridget Murphy, Michael Murphy, Jennifer Wallace, Pat & Caitriona Byrne, James & Maria Ansbro.

- The submission raised concerns regarding the impact of noise, dust and excessive operating hours on residential amenities.



## 7.0 Assessment

7.1 Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Principle of the proposed development

Design/visual impact

Adjoining amenity/noise/dust

Traffic

Appropriate Assessment

Other Issues

## 7.2 **Principle of the proposed development:**

7.2.1 Permission is sought for retention of a grain dryer and permission to install acoustic silencers to the grain dryer. The grain dryer is located within an existing agri-business with it noted that a grain depot has been operational at this location for 30 years. As noted above the site is zoned for Town Centre Activities with a mix of uses in the vicinity including commercial uses, community uses (playing pitch) and residential properties. The existing use on site is industrial in nature and although could be regarded as a non-conforming use within a town centre location, it is a long established use at this location.

7.2.2 The applicants note that the grain dryer for retention replaces a grain dryer that was in place at the same location and granted permission in 1982. Based on the planning history of the site the existing use and the existence of grain drying on site is established. The structure for retention is an ancillary structure to overall established use on site. On this basis, I would consider that the principle of the proposed development is acceptable, but is contingent on it having a satisfactory physical impact in regards to the amenities or adjoining properties and the visual amenities of

the area. These aspects of the proposal are to be assessed in the following sections of this report.

### **7.3 Design/visual impact:**

7.3.1 The proposal is for retention of a grain dryer within an existing agri-business premises. The structure is a metal structure that is just shy of 20m high. It is proposed to install acoustic silencers that will increase the height of the structure but not above the highest part of the existing structure on site. In regards to visual impact the structure for retention and alteration is the tallest structure on site, however such has a relatively small footprint in comparison with existing structures on site. The grain dryer is located adjacent existing sheds and silos that are of significant scale and bulk in comparison to the structure subject to retention and alteration. I would consider that the overall visual impact of the proposed development to be acceptable in the context of its modest footprint and relative to the size of established structures on site.

### **7.4 Adjoining amenity/noise/dust:**

7.4.1 The main issues raised by the appellants concerns the impact of the structure for retention and alteration on their residential amenities. The appellants' dwellings are located to the north of the site on Barrack Street and back onto the Slaney River. The appellants note that the grain dryer emits excessive noise levels as well as being operated at anti-social hours and also note concerns regarding dust emissions from the site. The appellants note that the operation of grain dryer subject to retention has had an adverse impact on residential amenity and are concerned that notwithstanding the alterations proposed or conditions applied, this situation will continue.

7.4.2 The information on file included an Environmental Impact Report. This report included details of noise impact. The report was revised in response to a request for further information. The report identified noise sensitive receptors in the vicinity of

the site corresponding to residential properties at four locations (St. Patricks Park, Barrack Street, Hawkins Lane and St. Austin's Terrace). The report includes details of noise monitoring carried out in 2015 and 2016. The 2016 results indicated that noise levels at the noise sensitive receptors exceeded the noise nuisance criteria set down by the EPA during daytime, evening and night time (dryer not operational at night time). There is suggestion from the results that noise levels are not solely generated by the dryer activity and that background noise such as traffic contributes to the noise levels. The report includes modelling for two scenarios, the operation of the dryer as is and the operation of the dryer with the acoustic silencers. The noise monitoring results note that the operation of the dryer in existing form would be very noticeable and exceed LAeq T of 55dB at the noise sensitive receptors. The results of modelling for the second scenario (with acoustic silencers) indicates a reduction in noise impact with daytime and evening time levels consistent with the EPA standards (55dB and 50dB respectively), however noise levels exceed the night time standard (45dB). It is noted that the applicant has committed to stop operations at 11pm in this regard. The revised report also included an assessment of noise impact on the otter population of the Slaney River with it considered that no adverse impact would ensue. The report recommended the mitigation measures in the form of the acoustic silencers, confined operating hours and future noise monitoring.

7.4.3 Based on the information on file, I am satisfied that subject to the mitigation measures proposed (installation of acoustic silencers) that the noise impact of the proposal can meet the noise limits set down by the EPA. I would note that the reports submitted acknowledges that even with the acoustic silencers the operation of grain dryer would exceed night time limits. The applicants are proposing to operate until 11pm, with the night time is defined by the EPA standards as 11pm onwards. I would recommend that no operation of the grain dryer beyond 10pm as was conditioned by the Planning Authority in granting permission and that it shall be operated within the emission limit values set down by the EPA. In this regard I would recommend a programme of monitoring to be carried out to ensure these limits are complied with. In this regard I would recommend a condition stating the emission limit values as well as a condition requiring future monitoring with the details to be agreed with the

Planning Authority. Having regard to such, I am satisfied that the proposal would be acceptable in the context of the amenities of adjoining properties.

7.4.3 In regards to dust impact, monitoring of dust deposition was carried out at 4 locations at the boundaries of the site using Bergerhoff standards of 350mg/m<sup>2</sup>/day.

According to the applicant the dryer is fitted with cyclones designed to remove dust from the air emissions arising from the dryer. The results of dust monitoring indicate that dust deposition levels are significantly below the nuisance limit of 350 mg/m<sup>2</sup>/day and that impact in regards to dust deposition is within acceptable limits. It is noted that the applicants do operate a dust mitigation strategy on site and that the dust monitoring results confirm such is effective. I am satisfied based on the information on file that the operation of the proposed development would not result in excessive dust deposition and that such would be within acceptable limits set down by best practice guidance. I would recommend a condition stating the emission limit values as well as a condition requiring future monitoring with the details to be agreed with the Planning Authority.

7.4.4 In granting permission the Planning Authority granted a temporary permission of 3 years giving the ability to reassess the proposal at a future date. I would consider that having regard to its location in a town centre location and its proximity to existing residential properties that a similar condition would be appropriate and would allow for the proposal to be reassessed in the future. Subject to such and the condition recommended above, I am satisfied that the proposal would be in accordance with the proper planning and sustainable development of the area.

## **7.5 Appropriate Assessment:**

7.5.1 The EU Habitats Directive (92/43/EEC) Article 6 (3) requires that “any plan or project not directly connected with or necessary to the management of the (European) Site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications

for the site in light of its conservation objectives. In light of the conclusion of the assessment of the implications for the site, and subject to the provisions of paragraph 4, the competent national authorities shall agree to a plan or project only after they have ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

7.5.2 A Natura Impact Statement was submitted with the application and an Appropriate Assessment Screening Report was submitted in response to further information. This report includes a description of the proposal and identification of all Natura 2000 sites within a 5km radius of the site. One site was identified...

#### Slaney River Valley SAC (Site Code 000781)

The report included details of the qualifying interests of the designated site including habitats (mudflats and sandflats, water courses, old sessile oak woods, alluvial forests) and species (otter, common seal, freshwater pearl mussel, sea lamprey, brook lamprey, river lamprey, twaite shad, salmon). The report outlines the conservation objectives for the site. The report included a field study of the river in the vicinity of the site for otters. Based on the fact the development site is remote from the SAC no direct impact or habitat loss is envisaged. Indirect impacts identified include noise impact on the otter population. In this regard it is noted that the proposal would be unlikely have an adverse impact on the conservation status of otters through noise, with it noted that the section of river nearest the site is located in the urban area with the proposed development not the only source of noise generation or human activity at this location with other development immediately adjacent the Slaney River in Tullow. In addition, it is noted that the grain dryer is to have less noise impact through the installation of acoustic silencers and restricted operating hours. Another indirect impact identified is dust deposition. The report notes that the proposal has been subject to dust monitoring (outlined in environmental report) and that dust levels along the boundaries of the site were found to be much less than the recommended limits (Bergerhoff standards of

350mg/m<sup>2</sup>/day). It was concluded that the proposal either by itself or in-combination with other plans or projects was unlikely to have any significant direct or indirect effects on the Natura 2000 site. In this regard it was noted that a Stage 2 Appropriate Assessment was not required.

7.5.3 The Board as a competent authority is obliged, as noted earlier in this section "shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned". In this regard it is appropriate to carry out a stage 1 screening assessment and then if necessary a stage 2 appropriate assessment. There is one Natura 2000 sites within 15km of the site.

Slaney River Valley SAC (Site Code 000781)

The appeal site and proposed development is remote from the designated site with the existing public road (Thomas Traynor Street) and development on its north eastern side located between the river and the appeal site. The proposal would not result in any habitat loss or reduction in the quality of the habitat and subsequently the conservation status of the designated sites. I am satisfied that the proposal would have no direct effect on the conservation status of the designated site. I am satisfied that the screening report identifies the potential indirect effects in the form of noise impact on species such as otters and dust deposition. I am also satisfied that has been demonstrated that the proposal is unlikely to have significant effects in this regard. I would also consider that the project would not have any likely effects in conjunction with other plans or projects on any designated Natura 2000 site. In this regard it is reasonable to conclude that on the basis of information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have effects on any designated Natura 2000 and that a Stage 2 Appropriate Assessment is not therefore required. In addition to this conclusion I would note the submission by the Development Applications Unit of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs outlined above.

## **7.6 Other Issues:**

7.6.1 The appellants note the Planning and Development Acts 2001-2015 including the section that notes that a planning authority cannot accept an application for retention for any development that would have required an environmental impact assessment, a determination as to whether EIA was required or an appropriate assessment under the Habitats Directive. The appellants note that this applies in this case. Firstly, the development would not be subject to the requirement for an Environmental Impact Assessment and an appropriate assessment screening has been carried out and a stage 2 appropriate assessment is not required for the development.

## **8.0 Recommendation**

8.1. I recommend a grant of permission subject to the following conditions.

## **9.0 Reasons and Considerations**

9.1 Having regard to the land use zoning designation for the site as set out in the Tullow Local Area Plan 2010-2016, to the planning history of the site and to the 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. The proposed development 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 as amended by the further plans and particulars submitted on the 06th day of February 2017 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. This permission is for a period of three years from the date of this order. The grain dryer structure shall then be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.

**Reason:** To enable the impact of the development to be re-assessed.

3. No operation of the grain dryer shall take place until the acoustics silencers have been installed.

**Reason:** In the interests of orderly development.

4. The operation of the grain dryer shall be confined to the period of June to October (harvest season) and shall only operate between the hours of 08:00 and 22:00 hours, Monday to Saturday, no activity shall take place outside these hours or on Sundays or public holidays.

**Reason:** In order to protect the amenities of property in the vicinity.

5. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwellings shall not exceed:-

(i) An  $L_{AeqT}$  value of 55 dB(A) during the period 0800 to 1900 hours from Monday to Saturday inclusive. The T value shall be one hour.



(ii) An  $L_{AeqT}$  value of 50 dB(A) at any other time. The T value shall be 15 minutes. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 "Assessment of Noise with respect of Community Response" as amended by ISO Recommendations R 1996 1 and 2 "Description and Measurement of Environmental Noise" as applicable.

**Reason:** To protect the amenities of property in the vicinity of the site.  
area.

5. Detail of a noise monitoring program including timing and monitoring locations is to be agreed in writing with the Planning Authority prior to the commencement of development.

**Reason:** To protect the amenities of property in the vicinity of the site.  
area.

6. A TA Luft dust deposition limit values of 350 mg/m<sup>2</sup>/day (when averaged over a 30-day period) at the boundaries of the site. The applicant shall carry out periodic monitoring at the boundaries to ensure this standard is to be maintained. Detail of a dust monitoring program including timing and monitoring location is to be agreed in writing with the Planning Authority prior to the commencement of development.

**Reason:** To protect the amenities of property in the vicinity of the site.  
area.

7. 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, as amended. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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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Colin McBride  
Planning Inspector

29<sup>th</sup> June 2017