



An  
Bord  
Pleanála

## Inspector's Report PL09.248323.



<b>Development</b>	Steep Fabrication Workshop and Office Block.
<b>Location</b>	Rear of Cush Inn, Cush, Kildangan, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	17/37
<b>Applicant</b>	Peter & Lilly Boland t/a Boland Steel.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First party vs. refusal
<b>Appellants</b>	Boland Steel.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	11 <sup>th</sup> July 2017
<b>Inspector</b>	Ciara Kellett

## 1.0 Site Location and Description

- 1.1. The appeal site is located within the rural townland of Cush, which is c.3km south of the village of Kildangan, Co. Kildare. It is located c.5km north-east of Vicarstown, c.7.4km south-east of Monasterevin, and c.5.2km south-west of Nurney. The River Barrow is c.1.9km to the west and 1.25km south.
- 1.2. The general area is rural in nature and the site is served by the R417 road. The Dublin-Waterford railway line runs to the immediate east of the site. The site is located behind the closed Cush Inn Public House.
- 1.3. The site is currently in agricultural use and is used for grazing. It is bounded to the north by an existing narrow country road with a bridge over the railway. The north, east and south are bounded by mature trees and hedgerows and the west is bounded by a low fence with views to the rear of agricultural buildings and the Cush Inn. Apart from the Cush Inn, the site is surrounded by fields in agricultural uses.
- 1.4. The site itself is relatively flat with dispersed trees and is stated as being 1.4Ha.
- 1.5. Appendix A includes maps and photographs.

## 2.0 Proposed Development

- 2.1. The proposed development is described as the construction of a steel fabrication workshop for the manufacture of steel farm buildings, gates and associated works, as well as an office block to include toilets, changing rooms and canteen with an overall floor area of 511sq.m. It is proposed to enlarge the entrance gate, provide 9 car parking spaces and a new effluent treatment system.
- 2.2. The building is 30m by 15m by 7.6m high at the apex. The office building is adjoined to the north side of the structure and is 6m by 12m by 4.8m at the highest point. The building materials comprise a blockwork wall up to 3m and cladding up to roof level. The roof is clad and incorporates roof lights. No details with respect to the colour of the cladding or how the blockwork wall is finished is provided. Roller shutter doors are proposed on each side of the building.
- 2.3. It is stated that the development is a relocation of the existing business from its present location at Harristown, Nurney.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a decision to **refuse permission** for three reasons as follows (summarised):

1. The proposal fails to meet the requirements for Rural Enterprise set out in Table 10.2 of the County Development Plan, and would be contrary to policy RE9 which seeks to protect agriculture and traditional rural enterprise from incompatible development and would set an undesirable precedent.
2. Site is not considered to be an appropriate location for an industrial facility which would be more appropriately located on zoned lands in the vicinity. It would injure the amenity and depreciate the value of property in the vicinity and set an undesirable precedent for similar industrial development in unserviced areas which is unplanned and haphazard.
3. Having regard to the lack of detail in relation to the steel fabrication process, it is considered that to permit the proposal in the absence of an assessment of environmental impact would be contrary to proper planning and sustainable development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Notes proposed development is over 500sq.m steel fabrication unit located in a predominantly rural area.
- Council acknowledges that development of rural enterprise and employment opportunities will be vital to sustaining the rural economy, but considers that there are certain types that are unsuitable, and that there are certain criteria that must be met.
- In general, 'footloose' commercial or industrial activities in towns and villages will not be permitted to relocate to unserviced rural areas.

- Site is unserved for waste water purposes. Effluent treatment proposed is based on 6 no. users – no effluent from industrial process has been considered.
- No detail on file to indicate rationale for relocation.
- There is no locally based resource requirement for the processing of steel in the Kildangan area.
- Proposal assessed against criteria in Table 10.2 of the Development Plan – considers that proposal is not a type of rural development that is envisaged in the Development Plan.
- No detail on file to indicate potential impact and notes that EIA is required in certain cases. Notes Production and Processing of metals is a category listed in Schedule 5 of the Planning and Development Regulations.
- The Planner recommends a refusal of permission.

The decision was in accordance with the Planner's recommendations.

### 3.2.2. Other Technical Reports

- **Area Engineer:** Concerns re sightlines - premature.
- **Environment:** Site is not considered suitable for provision of an on-site wastewater treatment system due to the presence of peat. Recommends refusal.
- **Water Services:** No objections subject to conditions.
- **Transportation:** No objections subject to conditions.
- **EHO:** Seeks Further Information.
- **CFO:** No objections subject to conditions.

### 3.3. Prescribed Bodies

- **Irish Water:** No objections.
- **Iarnród Éireann:** No objections subject to conditions.

### 3.4. Third Party Observations

- Cllr. Martin Miley made a submission in support of the application.

## 4.0 Planning History

In the vicinity of the Cush Inn:

- **Reg. Ref. 17/492:** A Planning Application was lodged in May 2017 by Green Gas Generation Ltd for the installation of Renewable Gas Injection facility with a bio-methane pressure reduction station, coupling unit, gas grid entry unit, propane storage tanks to facilitate HGV access. Outbuilding to the east side of the Cush Inn will be demolished in order to facilitate HGV access. The Cush Inn will remain in-situ. This application is currently at Further Information stage.

## 5.0 Policy Context

### 5.1. Kildare County Development Plan 2017 - 2023

Chapter 10 refers to Rural Development. Section 10.4 notes with respect to Kildare's Rural Economy that *"there is a need to balance social and economic activity with the protection of the environment and character of the rural landscape. The rural employment base should encourage diversification of the rural economy, by promoting economic growth in key towns / villages and settlements to support local populations, by facilitating stronger rural based activities including tourism and leisure activities and encouraging more appropriate forms of rural development. It is the intention of the Council to restrict development in rural areas to appropriate forms of development that have a social or economic connection to the local area"*.

Section 10.4.10 refers specifically to Rural Enterprises. It states *"Within the rural settlements /nodes and the rural countryside, agriculture, horticulture, forestry, tourism, energy production and rural resources based enterprise should be facilitated"* and *"In general, existing 'footloose' commercial or industrial activities in towns and villages will not be permitted to re-locate to unserved rural areas"*.

Table 10.2 provides Criteria for Assessment of One-Off Enterprises in Rural Areas.

The table lists 12 criteria including: developments shall be small scale, c. 200sq.m; shall be located on the site of a redundant farm building; social & economic benefit to the area; not adversely affect the character and appearance of the landscape; shall not be detrimental to the amenity of nearby properties; local road network can accommodate it; proposals to cater for waste etc.

**Policy RE 4:**

*Support the provision of a high quality rural environment, encourage diversification and improved competitiveness of the rural economy, sustain the livelihood of rural communities and promote the development of the wider rural economy, all within the context of the sustainable management of land and resources.*

And **Policy RE 9:**

*Protect agriculture and traditional rural enterprises from unplanned and/or incompatible urban development.*

Policy for Rural Enterprise **RLE 4:**

*Encourage the development of alternative rural based small-scale enterprises. The Council will consider the use, nature and scale of developments when assessing such applications. In addition, the Council will also consider the requirement to locate such developments in rural areas.*

**RLE 10:**

*Ensure that applicants comply with all other normal siting and design considerations including the following: (inter alia)*

*The ability of a site in an unserviced area to accommodate an on-site waste water disposal system in accordance with the County Kildare Groundwater Protection Scheme, and any other relevant documents / legislation as may be introduced during the Plan period.*

## 5.2. Natural Heritage Designations

The River Barrow and River Nore SAC (Site Code 002162) is located c.2km to the west and 1.25km to the south of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A first party appeal against the Planning Authority decision to refuse permission has been lodged on behalf of the applicant. In summary, it states:

- Proposal does not comprise a new use but would replace a longstanding steel fabrication operation, based in a series of buildings to the rear of the applicant's nearby home-place, in Harristown, Nurney, 3.2km away. Consider that the Council mis-characterised the proposal by failing to assess the benefits of relocating an existing use, including the advantages associated with bringing the existing operation within scope of planning control. Although existing use is unlawful, it should be still taken into account as per cited judgement, and could continue to operate from the existing location.
- Consider that the Council raised no objection to the building, access or to sewage arrangements, with its concerns pivoting on the location of the site in the countryside.
- Council overlooked the agriculturally-related nature of this proposal and its relationship with an existing business which is located 3.2km away.
- Reference made to numerous examples where the applicant considers that rural Ireland contains a host of non-agricultural activities including pet-farms, golf courses, retail attractions and factory premises.
- Council suggests the proposal should relocate to an existing settlement – consider that there is insufficient zoned area in local centres for such uses. Disagree that firms which serve the local farming community should be directed into nearby towns. Reference made to file PL09.244570. Consider manufacturing can be a poor neighbour to housing, schools, shops etc. in terms of land-use compatibility in small settlements. Considers zoning arrangements for Kildangan and Kilmead make no provision for industrial activity and consider it an omission that the Council did not nominate a particular settlement. There are no alternative locations within the immediate area to where this business can relocate.

- Refer to Councils comments that no rationale has been supplied for proposed location. Applicant confirms that Boland Steel would relocate and that no non-domestic activities would take place in existing buildings and that applicant is willing to enter into a Section 47 agreement.
- With respect to criteria in Table 10.2 reference to small-scale proposals being 200sq.m consider this is a general guide and consider that the existing facility in Harristown is 434sq.m and the proposed area of 511sq.m is not materially greater.
- Consider Council erred in the analysis of the nature of Boland Steel operation. Boland Steel purchases steel girders in standard lengths, and cuts and bolts or light welds to manufacture buildings or equipment sought by their customers – the process does not involve iron ore smelting. Consider key environmental issue which could arise is noise and considers countryside is not completely silent (Reference PL18.233084). An EIA is not required.
- Consider that the development which involves a father and son, does not breach strategic objective ECD9.

## 6.2. Planning Authority Response

The Planning Authority had no further comments to make.

## 7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of development
- Environmental Impact
- Appropriate Assessment



## 7.2. Principle of development

The applicant considers that the Planning Authority did not take into account the existence of the current business, c.3.2km away near Nurney, and that the subject proposal is a relocation rather than a new business. The applicant considers that this point should have been taken account of, as well as the fact that the relocation includes the advantage of bringing the existing operation within the scope of planning control. The applicant is willing to enter into a Section 47 agreement to the effect that no non-domestic activities would take place from the existing buildings to the rear of the family home, in Harristown, Nurney.

From a review of the information submitted by the applicant as part of the appeal, it would appear that the existing operation does not have the benefit of planning permission, but has been in existence since 1990, serving the community. At the outset, the Board has no role in enforcement which is entirely a matter for the Local Authority. I note that the subject application does not request permission for any development etc. on the existing site in Harristown, Nurney, and therefore, I consider that the subject case refers only to the lands within the red line, to the rear of the Cush Inn.

No information is provided on the file explaining the rationale for the relocation. In addition, the applicant does not make clear why this particular site has been chosen to relocate to. I accept that the applicant has an established business which serves the local community, but no information has been provided, apart from a reference to a lack of zoned areas in the nearby villages, to justify this particular site.

The chosen site is outside of any village or zoned area and therefore must be considered for compliance with the policies and objectives for development in a rural area. The County Development Plan supports appropriate rural enterprise in rural areas when it accords with policies and objectives. Section 10.4.10 of the Plan specifically states that it does not support existing 'footloose' commercial or industrial activities to relocate to unserved rural areas. As noted above, it is unclear why this particular site has been chosen, and I would consider that a definite need to be in this rural area has not been established. I accept that the business serves the local community, but having regard to the nature of the business, it is not necessary to locate in a rural, un-zoned and unserved area.

The applicant states that there are no zoned areas in the local villages. Volume 2 of the County Development Plan identifies small villages and rural settlements. There are employment objectives to retain and promote the expansion of new local businesses.

Policy RE 9 seeks to protect agriculture and traditional rural enterprises from unplanned and/or incompatible urban development. Policy for Rural Enterprise, RLE 4, encourages the development of alternative rural based small-scale enterprises and will also consider the requirement to locate such developments in rural areas. However, I do not consider this to be small scale and no requirement to locate in a rural area has been demonstrated. Hence, I am of the opinion that the subject proposal is not in accordance with policies RE9 and RLE4.

The applicant states that firms which serve the local farming community should not be automatically directed into a nearby town. Table 10.2 of the Development Plan provides Criteria for Assessment of One-Off Enterprises in Rural Areas, including that developments shall be small scale, c. 200sq.m, located on the site of a redundant farm building, not adversely affect the character and appearance of the landscape, proposals to cater for waste etc.

The building is greater than 500sq.m, which I do not consider small scale and is to be located in a green field – not on the site of a redundant farm building. I consider that it would adversely affect the character and appearance of the landscape. Proposals to deal with waste are addressed below.

In conclusion, I am not satisfied that the principle of development is in accordance with the policies and objectives of the Development Plan for rural enterprises. I do not consider that there is a need for the development to be located in this rural and unserved area. It is not in accordance with the assessment criteria for one-off enterprises in rural areas, and would set an undesirable precedent for similar industrial development in unserved areas which is unplanned and haphazard.

### **7.3. Environmental Impact**

The Planning Authority noted that in the absence of details in relation to the steel fabrication process, it is considered that to permit the proposal in the absence of an assessment of environmental impact would be contrary to proper planning and

sustainable development. As part of the appeal, the applicant provides information in relation to the process that is carried out on the existing premises. I consider that the type of operation that is carried out would not involve any activity that would be subject to an Environmental Impact Assessment in accordance with Schedule 5 of the Planning and Development Regulations, 2001, as amended.

With respect to waste water, the application is accompanied by a Report and Site Suitability Assessment. The assessment considers that there is a maximum of 6 personnel on site. I note that 9 car parking spaces have been provided for, including 4 customer parking spaces. I note that there has been no allowance made for the disposal of any process effluent. No information has been provided to definitively dismiss there being any process effluent. I would also consider that the applicant should have had regard to the EPA's Wastewater Treatment Manual for Small Communities, Business, Leisure Centres and Hotels.

The Environment Section of the Council recommended a refusal because it was not considered that the site was suitable for the provision of an on-site wastewater treatment system, due to the presence of peat in the proposed percolation area.

A surface water attenuation tank is indicated on the drawings, but no information has been provided with respect to the size or if any petrol interceptors etc. are proposed.

In conclusion, I am not satisfied that sufficient information has been provided to confirm that the proposed waste water treatment system and surface water attenuation are suitable for the development.

#### **7.4. Appropriate Assessment**

An appropriate assessment screening report has not been submitted by the applicant. The Planning Authority screened for AA and concluded that impacts are possible and the development requires more detailed screening/Stage 2 AA.

I follow the staged approach to screening for appropriate assessment as recommended in both EU Guidance and by the Department of Environment, Heritage and Local Government: -

1. Description of the plan or project and local site or plan area characteristics.

2. Identification of relevant Natura 2000 sites and compilation of information on their qualifying interests and conservation objectives.
3. Assessment of likely significant effects-direct, indirect and cumulative, undertaken on the basis of available information.
4. Screening statement with conclusions.

*Project Description and Site Characteristics*

The proposed development is as described in the report above and in the application documentation.

*Relevant Natura 2000 Sites, Qualifying Interests and Conservation Objectives*

One Natura Site is identified as being within a 15km radius of the site. The site is:

<b>Site Code, Site Name and Designation</b>	<b>Approx. distance from the site at Cush</b>	<b>Qualifying Habitats and Species</b>
002162 River Barrow and River Nore SAC	1.2km	Estuaries, Mudflats and sandflats, Salicornia, Atlantic salt meadows, Mediterranean salt meadows, water courses, European dry heaths, Hydrophilous tall herb fringe communities, Petrifying springs, old sessile oak, Alluvial forests with Alnus glutinosa and Fraxinus Vertigo moulinsiana, Margaritifera margaritifera, Austropotamobius pallipes, Petromyzon marinus, Lampetra planeri , Lampetra fluviatilis , Alosa fallax fallax,,Salmo salar, Otter, Killarney Fern, Nore Pearl Mussel

The Natura site has potential linkages with the proposed site – the hedgerow and ditch runs from the east of the site south alongside the railway track towards the Natura site.

A Conservation Management Plan for the sites has been published.

*002162 River Barrow and River Nore SAC*

Desmoulin's whorl snail/ Freshwater pearl mussel/ White-clawed crayfish/ Sea Lamprey/Brook Lamprey/ River Lamprey/ Twaite Shad/ Atlantic Salmon/ Estuaries/ Mudflats and sandflats not covered by seawater at low tide/ Salicornia and other annuals colonizing mud and sand/ Atlantic salt meadows/ Otter/ Mediterranean salt meadows/ Killareney Fern/ Nore Freshwater pearl mussel/ Water courses of plain to montane levels with vegetation/ European dry heaths/ Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels/ Petrifying springs with tufa formation/ Old sessile oak woods/ Alluvial forests:

To maintain the favourable conservation condition of the qualifying feature in the SAC, which is defined by the list of attributes and targets as defined by NPWS/ To restore the favourable conservation condition of the qualifying feature in the SAC, which is defined by the list of attributes and targets as defined by the NPWS.

*Assessment of likely effects*

The site is not within a designated site, thus there would be no direct impacts from the proposed development. The site is potentially linked with the Natura 2000 site via a hedgerow and ditch to the east of the site.

Along with the on-site wastewater treatment system and the additional parking spaces and hard surface areas, there is a risk from the surface water entering the ditch. There is also the potential of polluting materials entering the ditch when development materials are being brought on site.

Having regard to;

- The source-pathway-receptor model which establishes that the watercourse in the site which feeds into the River Barrow and River Nore SAC (002162) to the south provides a potential hydrological link between application site and the Natura 2000 site,
- The conservation objectives for the River Barrow and River Nore SAC (002162) include the maintenance of the favourable conservation status of sensitive habitats listed for protection in Annex 1 of the Habitats Directive,
- The potential for likely and significant effects arising from pollutants draining from the waste water treatment plant and surfaced areas on site (the source)

travelling in the watercourse system (the pathway) and reaching habitats and or species for which the SAC has been designated (the receptors),

- The potential for likely and significant effects arising from the proposed development in combination with effects from farming,

I conclude on the basis of the information provided with the application and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Barrow and River Nore SAC (002162) in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission should be refused permission for the reasons and considerations as set out below

## **9.0 Reasons and Considerations**

1. It is the policy of the planning authority, as set out in the current Development Plan for the area, to permit development proposals for business enterprises in the countryside where the proposed use has locational requirements that can only be accommodated in a rural location and where this has been adequately demonstrated. This policy is considered to be reasonable. It is considered that the proposed development of light industry and offices has no specific locational requirements which necessitate its location at this rural, un-zoned and unserviced location and would, thereby, contravene this development plan policy. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the soil conditions, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary

wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

3. The Board is not satisfied that the application has demonstrated that the proposed development would not have a significant adverse effect on a nearby European Site, specifically the River Barrow and River Nore SAC (002162) based on the site's conservation objectives.

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Ciara Kellett  
Senior Planning Inspector

12th July 2017