



An  
Bord  
Pleanála

## Inspector's Report PL02.248658

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| <b>Development</b>                  | Retain existing buildings A and B and covered shelter, and change of use from farm buildings (buildings C and D) for dog breeding, exercise yards, play zone and associated works. |
| <b>Location</b>                     | Kilduff, Redhills, County Cavan.   |
| <b>Planning Authority</b>           | Cavan County Council   |
| <b>Planning Authority Reg. Ref.</b> | 16/437   |
| <b>Applicant(s)</b>                 | Edward Mulvaney  |
| <b>Type of Application</b>          | Permission/Retention   |
| <b>Planning Authority Decision</b>  | Grant permission with conditions.  |
| <b>Type of Appeal</b>               | Third Party  |
| <b>Appellant(s)</b>                 | Michelle Strauss/ Sue Kilbracken   |
| <b>Observer(s)</b>                  | None   |
| <b>Date of Site Inspection</b>      | 17 <sup>th</sup> October 2017  |
| <b>Inspector</b>                    | Hugh Mannion   |

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## 1.0 Site Location and Description

- 1.1. The site has a stated area of 0.91ha and is located in a rural area in Kilduff, Redhills, County Cavan. The site is part of a larger agricultural holding which includes the applicant's domestic dwelling immediately southwest of 'building A'. There are a further two houses on lands which appear to have been part of the original landholding, one accesses the public road south of the application site and one shares the application site's access to the public road. The site is on higher ground than the public road, the boundary between landholding and the public road is generally defined by a low hedge and the junction of the access road and the public road is well set back with splayed stone walls and a cattle grid. There are some trees between the public road and the buildings to be retained which provide some screening. The public road is relatively narrow, there are no footpaths or median line.
- 1.2. The farmyard has a number of structures including three large farm buildings and a silage pit that are not the subject of this application. There is an unoccupied older farmhouse within the farmyard complex. Starting on the left (see site layout plan drawing No.29-16-2) where the access road from the public road ends in the farmyard is a dog play zone and building B. Immediately beside the dog play zone and building B is building C separated by a walkway from building D. Behind buildings C and D is an existing farm building (not part of the application) but where soiled bedding is handled with an associated slatted effluent tank. On the other side/south side of the farmyard is building A which houses dogs and immediately behind that is an associated covered exercise area with an effluent tank beneath it.

## 2.0 Proposed Development

The proposed development comprises (a) retention of buildings A and B and covered shelter. Change of use of buildings C and D from farm buildings to dog breeding and exercise yard, play zone and associated works at Kilduff, Redhills, County Cavan.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant permission subject to conditions.

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

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

The original planners report recommended refusal for reasons of environmental impacts and impact on residential amenity in the area.

A second planner's report recommended a grant of permission subject to conditions. The manager's order gave effect to this, second, planner's report.

#### **3.2.2. Other Technical Reports**

The planning authority's Scientific Officer recommended additional information in relation to volumes of waste to be produced, storage facilities, expected levels of odour and noise and predicted impacts on sensitive uses within 400m.

The Executive Environmental Scientist/Senior Engineer reviewed the submission of further information and recommended a grant of permission with conditions.

### **3.3. Prescribed Bodies**

Fisheries Ireland commented that the proposed development should have regard to the Good Agricultural Practice regulations.

### **3.4. Third Party Observations**

There were third party observations which, generally, raised issues similar to those raised in the appeal.

## 4.0 Planning History

There is no relevant planning history for this site. However, the Board has determined a number of applications where some similar issues as in this case arose.

**PL93.246872** Permission for the retention of four dog kennels and a new dog run/paddock at Harristown, Dunmore East, County Wexford. The Board granted permission subject to conditions. Condition number 3 may be relevant in the present case;

*The proposed on-site waste treatment unit shall be omitted from the proposed development. Waste disposal from the kennels shall be off-site to a suitable licenced facility unless permission for a suitable on-site facility has been obtained from the planning authority or the Board on appeal.*

**Reason:** *The proposed waste treatment unit is unacceptable both in terms of its nature and its location in close proximity to a site boundary and in the absence of details of local drainage.*

**PL09.246754** Permission was granted for development including an animal shelter. Conditions 5 and 6 imposed in that case were as follows;

*5. All solid household waste from the development shall be offered for collection to a waste contractor in possession of a valid waste collection permit either under the Waste Management (Collection Permit) Regulations 2001 or the Waste Management (Collection Permit) Regulations 2007 and the Waste Management (Collection Permit) (Amendment) Regulations, 2008 whichever may be relevant. Alternatively, the householder may bring household waste to an appropriate civic waste facility or recycling centre. No burning of waste is permitted. (The householder may wish to use an on-site compost bin for suitable wastes and where a dry recyclable bin collection service is available it should be utilised).*

**Reason:** *In the interest of public health.*

6. Waste from the dog kennels shall be disposed of in accordance with the procedure outlined in the letter from Brendan P Kavanagh (dated the 26th day of September, 2015) received by the planning authority on the 7th day of December, 2015.

**Reason:** *In the interest of public health.*

**PL02.248253** Permission for the erection of four buildings related to the keeping of greyhounds. Conditions imposed included;

5. All solid waste and foul effluent arising from the keeping of 80 dogs shall be stored in secure and covered bins, shall be disposed of by a licensed contractor and shall comply with the requirements of the planning authority.

**Reason:** *In the interest of public health and to ensure a proper standard of development.*

6. Within two months from the date of this order, the developer shall submit to and agree in writing with the planning authority, details of the proposed storage tank to accommodate wastewater discharge from the kennels. Such wastewater shall be collected in a sealed secure tank of appropriate volume not less than seven cubic metres. All effluent stored in the tank shall be collected and appropriately disposed of by a licensed contractor in accordance with the requirements of the planning authority.

**Reason:** *In the interest of public health and to ensure a proper standard of development.*

## 5.0 Policy Context

### 5.1. Development Plan

The Cavan County Development Plan is the relevant development plan for the area.

## 5.2. Natural Heritage Designations

See AA screening section below.

## 5.3. The Appeal

### Grounds of Appeal

- The applicant did not provide details of the combined hydraulic and biological loadings arising from the proposed development.
- No sanitary facilities are provided for staff in contravention of Health and Safety at work legislation. The proposal may give rise to water pollution.
- The applicant did not provide details of solid waste arising from the proposed development. Dog waste (faeces/soiled bedding) is a risk to human health and livestock and should not be spread on land.
- The additional information should have been subject of a new notice.
- The applicant has a history of non-compliance with the planning acts.
- The application requires submission of an EIS and may not be the subject of an application for planning permission.
- The proposed development will give rise to traffic hazard.
- The proposed development may require a fire safety certificate and may give rise to fire safety risk.
- The planning authority erroneously treats this dog breeding business as an agricultural use – it is not such a use.
- The proposed development will give rise to noise, odour and air pollution.
- The proposed development contravenes the County Development Plan.
- The proposed development is a threat to animal welfare.

#### 5.4. Applicant's Response

- The planning authority's decision is reasonable.
- The proposed development is a rural enterprise supported by policy EDP5 in the County Development Plan.
- The WWTS and percolation area serving the site adequately treats the waste generated by the 5 staff on site.
- Foul/wash water is separated from clean surface water as illustrated in drawing 29-16-2.
- The site houses 171 dogs and is licensed to accommodate 180.
- Solid wastes (manure/bedding) is removed by a contractor from the site.
- A noise monitoring report was submitted and no odour emanates from the site.
- The environmental impacts do not affect third party dwellings.
- The proposed development does not require AA or EIA.

#### 5.5. Planning Authority Response

The planning authority responded as follows;

- The information requested by the Environment Section was submitted and was adequate to base a decision on.
- The decision complies with planning law.
- The proposal will not give rise to traffic hazard.
- Fire safety is dealt with under a separate code.
- Animal breeding is properly located in a rural area.
- Conditions 5,6,7,8 and 9 relate to waste management.
- Noise, odour and air pollution are dealt with by conditions 13, 14 and 15.
- The development complies with development plan provisions.
- Animal welfare is dealt with Dog Breeding Establishment Regulations.



## 5.6. Observations

There are no observers.

## 5.7. Further Responses

There are no further submissions.

## 6.0 Assessment

### 6.1. Development Plan Policy

- 6.1.1. The appeal makes the point that the proposed development does not comply with development plan policy. The planning authority in its response to the appeal makes the point that the proposed development is compatible with the rural character of the area. Objective ED02 in the county development plan is to;

To encourage and facilitate agricultural diversification into agri-businesses such as organic foods, rural/agri- tourism, farmhouse accommodation, pet-farms, horse trekking centres and small to medium sized enterprises subject to the retention of the holding for primarily agricultural use and the proper planning and sustainable development of the area.

- 6.1.2. The site is located on unzoned lands in a remote rural area outside the development boundary of any settlement and is part of a larger agricultural land holding. The county development plan (chapter 3 - Economic Development) makes the point that it is necessary to promote farm diversification and rural employment within the agricultural sector in order to sustain rural communities. The county development plan imposes constraints on development in rural areas particularly in relation to protection of water quality. Subject to the matters analysed below and having particular regard to objective ED02 I conclude that the proposed development represents a diversification of agricultural use within an existing agricultural landholding and is in compliance with the provisions of the Cavan County Development Plan 2014 to 2020.

## 6.2. EIS – Screening

- 6.2.1. The appeal makes the case that the proposed development should have been subject to EIA. The classes of development, and applicable thresholds within those classes, which require submission of an EIS and the carrying out of EIA are set out in Schedule 5 Parts 1 and 2 of the Planning and Development Regulations 2001, as amended. Class 1 of Part 1 relates to development related to agriculture, silviculture, and aquaculture. Dog breeding or the keeping of dogs is not a class of development within Schedule 5.
- 6.2.2. Where an application for permission is made to the planning authority, or the Board, the planning authority should consider if the proposed development is sub-threshold and therefore requires a submission of a subthreshold EIS in accordance with article 103 of the Regulations. But to be subthreshold a proposed development must be within a class of development provided for in the regulations. Since the proposed development in this case is not within such a class it does not trigger the requirement for a sub-threshold EIS.

## 6.3. Validity of Planning Authority Decision

- 6.3.1. The appeal makes the related points that the planning authority failed to properly consider that application and that there should have been a new public notice following the submission of further information.
- 6.3.2. In this regard it may be noted that the Board will consider and decide upon the application *de novo* and has no supervisory function in relation to how the planning authority carries out its planning functions.

## 6.4. Traffic Safety

- 6.4.1. The appeal includes as appendix 8 a report which concludes that the local road L1518 to which the development has access is inadequate particularly for fire tenders and service vehicles serving the site. The planning authority's roads engineering advice (see internal email dated 1<sup>st</sup> November 2016) is that the application will generate an increase in traffic but not to such a degree that it would impact negatively on local road L1518.

6.4.2. The local public road is narrow and without footpaths or a median line. But it is not heavily trafficked and is not a connecting route between any centres of population; it does not connect Redhills and Ballyhaise. It may be noted that there are no advertising structures on the roadside relating to the existing dog breeding facility. The proposed development will generate some additional road traffic but having regard to the limited scale of the proposed development I conclude that a marginal increase in traffic will not endanger public safety by reason of traffic hazard on the local road network.

## 6.5. **Fire Safety**

6.5.1. The appeal makes the point that the proposal may give rise to fire safety concerns. The planning authority in its response to the appeal makes the point that fire safety issues are, primarily, a matter to be considered under the Building Control Acts.

6.5.2. It may be noted in this regard that the Development Management Advice and Guidelines for Planning Authorities (DoEHLG 2007) make the point that planning permissions should not include conditions requiring applicants to obtain Fire Safety Certificates. Having regard to the type and modest scale of the buildings the subject of the application and construction materials (largely concrete block walls and non-flammable roofs) I conclude that the proposed development should not be refused planning permission on grounds of endangering public safety by reason of fire safety hazard.

## 6.6. **Effluent Treatment**

6.6.1. Objective ED04 in the county development plan commits the planning authority “to ensure that all agricultural activities comply with legislation on water quality, such as the Phosphorous Regulations, Water Framework Directive and Nitrates Directive”. The appeal makes the case that the proposed development will give rise to water pollution and endanger public health. The preliminary planner’s report recommended refusal on the basis of impacts on the environment.

6.6.2. The planning authority’s scientific office recommended seeking further information in relation to the existing and proposed loading of the DWWTP serving the development, the proposed loading of any new WWTS, details of the water supply, details of surface water drainage, capacity of storage tanks for animal effluent, the number of dogs kept on site, estimate of the solid and liquid waste generated, details

of any contracts/arrangements for waste removal from the site, an assessment of noise impacts on sensitive locations within 400m of the site, proposals for (environmental) monitoring, details of handling of any asbestos on site.

- 6.6.3. The applicant responded that there were no DWWTS existing on site and no WWTS proposed within the development site; that operators of the dog breeding premises would use the applicant's private house adjoining the site when sanitary facilities are required. The planning authority accepted this situation. The applicant in his comments on the grounds of appeal adds that there are 5 staff working in the dog breeding premises. I consider it reasonable that the applicant should satisfy the planning authority that the DWWTS serving his dwelling house which adjoins the application site and services the proposed development is adequate to treat the effluent being discharged to it and attach a draft condition requiring this (see draft condition number 6 below).
- 6.6.4. In response to the request for further information the applicant stated that there are 171 dogs kept on site and the premises is licensed for a total of 180. Water supply Annagh group water scheme. The applicant distinguished between three potential sources of waste arising within the development. Dry waste comprising straw/sawdust bedding, wash water from concrete areas and clean surface water. Dry waste is collected on site and disposed of by Joe Brady Contractors Limited who hold a Waste Collection Permit. Soiled water from kennels and hard surface areas is collected in four underground tanks; one for each of the buildings A, B, C, and D. The dimensions of the tanks are set out in the response to the further information request and the resulting soiled water is spread on lands in accordance with the EU (Good Agricultural Practice for Protection of Waters) Regulations 2014. The waste water from these tanks will be pumped to a sprinkler system shown on site location map drawing number 29-16-8 submitted to the planning authority on the 20<sup>th</sup> April 2017. I estimate that this sprinkler system is located about 100m from the nearest watercourse (see the local water courses mapped on page 5 of the applicant's submission in response to Fisheries Ireland received by the planning authority 20<sup>th</sup> April 2017). Clean surface water from roofs and unsoiled areas is channelled on site away from soiled areas and disposed of on site.

- 6.6.5. These details were reviewed by the Environmental Scientist and Engineering staff of the planning authority and a recommendation to grant permission with conditions was made.
- 6.6.6. The arrangements described in the application and further information accurately reflect the layout on site. In particular, the soiled bedding is kept over a collection tank in an existing farm building; although there was no visible liquid effluent draining from the used bedding material. Washwater is directed to underground tanks and then distributed via a sprinkler system onto the landholding at a reasonable distance from any watercourse. In summary I conclude that the proposed development is constructed and managed in a manner to prevent surface or ground water pollution.

**6.7. Noise, Odour and Air pollution.**

- 6.7.1. The appeal makes the point that the proposed development will give rise to noise impacts for property in the area. The issue of noise was raised in the request for further information. The planning authority requested that the applicant submit an assessment of noise and odour impacts on property within 400m of the proposed development.
- 6.7.2. The applicant submitted a noise survey in accordance ISO 1996:2007 Acoustics – Descriptions, Measurement and Assessment of Environmental Noise. There are five houses within 400m of the proposed development (of which one is the applicant's house). Two noise sensitive locations were monitored for noise impacts; one south of the proposed development and another southwest on the opposite side of the public road. The results of the measurements are set out in the tables included in the further information; it was concluded that there is no tonal or impulsive element in the noise generated by the proposed development and that mitigation measures including restricting feeding/grooming/exercising to between 7am and 6pm, closing doors at night and restricting access to staff only will adequately mitigate adverse noise impacts.
- 6.7.3. The response to the request for further information in relation to noise was reviewed by the Environmental Scientist and Engineering staff of the planning authority and a recommendation to grant permission with conditions was made.
- 6.7.4. The proposed development is located in a rural area, set well back from the public road and within an existing farmyard. The noise levels recorded in the monitoring

results do not appear to be excessive and the Board has received no observations in accordance with section 130 of the Act in relation to noise impacts in the vicinity of the site. I conclude that the proposed development will not seriously injure the residential amenity of property in the vicinity by reason of excessive noise.

- 6.7.5. The planning authority sought the applicant's comments in relation to odour emitting from the proposed development. The applicant responded that odour would be monitored. During my site inspection which occurred on a relatively calm day included all the built units proposed for retention, the access road and adjoining public road I identified no unreasonable odour emanating from the proposed development. I conclude that the proposed development will not seriously injure the residential amenity of property in the vicinity through the generation of odour.
- 6.7.6. Having regard to the modest scale, location and type of development proposed I conclude that the proposed development will not impact on climate.

#### **6.8. Appropriate Assessment**

- 6.8.1. The planning authority sought an AA screening exercise for the proposed development by way of a request for further information. The submitted screening report identifies Lough Oughter and Associated Loughs SAC (00007) and Lough Oughter SPA (004049). The former is 817m south of the site at its closest point and the latter is 5.2km southwest of the site. The AA screening states that the emissions from the proposed development are solid waste which will be removed by a qualified waste contractor, the clean surface water runoff will be disposed of on site and that soiled surface water will be disposed of through an on-site sprinkler system. There will be no reduction in the habitats for which the Natura 2000 sites have been designated, no reduction in water quality or impact on species.
- 6.8.2. Having regard to the material submitted with the application and appeal and my site inspection I conclude that the solid waste has no capacity to have a significant effect on a European site because it is removed from the site and therefore does not comprise a potential source for contamination. The clean surface water arising within the site will be dealt with within the site and is not a source of contamination. Soiled water will be collected in four tanks and be spread on the landholding in accordance with the EU (Good Agricultural Practice for Protection of Waters) Regulations 2014 and therefore will not give rise to water pollution.

6.8.3. Having regard to the foregoing it is reasonable to conclude that on the basis of the 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 a significant effect on Lough Oughter and Associated Loughs SAC (00007) and Lough Oughter SPA (004049) or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## **7.0 Recommendation**

Having regard to the foregoing I recommend a grant of planning permission for the reasons and considerations and subject to the conditions set out below.

## **8.0 Reasons and Considerations**

The proposed development is located on in an unzoned rural area where the predominant land use is agriculture and in relation to which it is an objective of the planning authority set out in the Cavan County Development Plan 2014 to 2020 to encourage and facilitate agricultural diversification into agri-businesses including pet-farms. It is considered that the proposed development, subject to compliance with the conditions set out below, would not endanger public safety by reason of traffic hazard, give rise to water pollution or injure the amenity of residential property in the vicinity and would otherwise accord with the provisions of the County Development Plan and with the proper planning and sustainable development of the area.

## **9.0 Conditions**

1. The development shall be retained, 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 20th day of April 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 within three months from the date of this order

and the development shall be retained, carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The number of dogs, including pups, present on the overall site at any given time shall not exceed 180. A readily readable register of all dogs present shall be maintained and shall be available for inspection by the planning authority during normal working hours.

**Reason:** In the interest of orderly development and residential amenity.

3. All dogs shall be housed indoors between the hours of 2000 hours and 0700 hours every day.

**Reason:** In the interest of orderly development and residential amenity.

4. All solid waste and foul effluent arising from the keeping of dogs shall be stored in secure and covered bins, shall be disposed of by a licensed contractor and shall comply with the requirements of the planning authority.

**Reason:** In the interest of public health and to ensure a proper standard of development.

5. Water supply and drainage arrangements, including the disposal of uncontaminated surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

6. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited 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 water courses.



7. (a) The domestic waste water treatment plant in use by the operators and staff of the development authorised by this grant of permission shall be located, constructed and maintained in accordance with the requirements of the document entitled “Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p. e.< 10)”, Environmental Protection Agency, 2009.
- (b) Within three months of the date of this order the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the domestic waste water treatment plant has been installed and commissioned and is working in a satisfactory manner and in accordance with the standards set out in the Environmental Protection Agency document.
- (c) A maintenance contract for the treatment system shall be entered into for a minimum period of five years for the provision of the treatment system and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (d) Surface water soakways shall be located such that the clean surface water from roofs and paved areas of the site shall be diverted away from the location of the domestic waste water treatment plant.
- (f) Only effluent from the dwellinghouse shall be discharged to the domestic waste water treatment plant treatment system.

**Reason:** In the interest of public health.

8. 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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Hugh Mannion  
Inspectorate

25<sup>th</sup> October 2017