



An  
Bord  
Pleanála

## Inspector's Report PL10.248773.

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<b>Development</b>	Retention for slatted tank and part construction of shed and permission to complete shed.
<b>Location</b>	Clasharoe, Carrigeen, Mooncoin, Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority Reg. Ref.</b>	17/231.
<b>Applicant</b>	Pat Silke.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Thomas Deady
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	15 <sup>th</sup> November 2017
<b>Inspector</b>	Philip Davis

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## 1.0 Introduction

This appeal is by a local resident against the decision of the planning authority to grant permission for the retention of a slatted tank with the construction of associated sheds in a rural area south-east of Mooncoin, in south county Kilkenny. The grounds of appeal relate mostly to claims by the appellant that the slatted tank in place was not constructed to Department of Agriculture standards and as such is a hazard to ground and surface water and local amenities.

## 2.0 Site Location and Description

The appeal site is located in Clasharoe townland in a rural area some 3-km south-east of the village of Mooncoin in an area of land within a loop on the River Suir west of Waterford City. This 'loop' is the southernmost part of county Kilkenny. The area is characterised by generally flat farmland – mostly pasture - served by a network of third class roads south from the N24 Waterford to Carrick-On-Suir route. The area is well populated with numerous individual dwellings and linear ribbons of development scattered on the third class road, reflecting its close proximity to the city of Waterford in addition to a number of older historic agricultural clusters.

The appeal site, with an area give as 0.285 hectares, is a small farm complex, including a slatted shed and farm buildings and an abandoned 2-storey dwelling, of early 19<sup>th</sup> Century origin. It is located on the southern side of a third class road. There is a cottage (not part of the site) immediately to the south-west of the site, with another dwelling immediately west of this. 150 metres to the east is a junction with a north to south bearing third class road, with a near continuous ribbon of mostly modern bungalows. There is a small cul-de-sac development of bungalows about 200 metres to the south close to a school and RC church. Otherwise, the site is surrounded by grazing fields. There is a pond just opposite the site to the north-west.

### 3.0 Proposed Development

The proposed development is described as follows on the site notice:

*Permission for retention for slatted tank and part of construction of shed and for planning permission to complete shed, including all necessary site works.*

### 4.0 Planning Authority Decision

#### 4.1. Decision

The planning authority decided to grant permission subject to 6 standard conditions.

#### 4.2. Planning Authority Reports

##### 4.2.1. Planning Reports

- Notes Warning Letter (ENF 15092) issued for unauthorised works on the site.
- Previous application effectively withdrawn
- Policy (Section 6.2.4) in the Development Plan that agricultural buildings be as unobtrusive as possible and do not cause pollution.
- The area is not within a high amenity area or other designated area.
- The design is considered acceptable, permission recommended.

##### 4.2.2. Other Technical Reports

**Executive Engineer (Environment).** Requested further information regarding certification that a suitably qualified person to confirm that it has been constructed in accordance with DoA specification S123 ('Minimum Specification for Bovine Livestock Units and Reinforced Tanks)'. I note that this memo followed one day after another stating there was no objection, subject to three conditions. The planners report only refers to the first memo.

#### 4.3. Prescribed Bodies

None on file.

#### **4.4. Third Party Observations**

The appellant submitted two objections to the proposed development.

#### **5.0 Planning History**

None on file, but the planners report notes a previous application (further information request not followed up), and an enforcement notice.

#### **6.0 Policy Context**

##### **6.1. Development Plan**

The site is in open countryside without a specific designation in the Kilkenny County Development Plan 2014-2020. Section 6.2.4 sets out policy for agricultural developments.

##### **6.2. Natural Heritage Designations**

The only nearby EU designated habitat is the Lower River Suir SAC, just over 1 km at its closest.

#### **7.0 The Appeal**

##### **7.1. Grounds of Appeal**

- It is argued that the concrete for the pit was set incorrectly and this provides potential for pollution of local watercourses.
- It is argued that the slats used are substandard.
- It is claimed that that the letter submitted with the application (copy attached) which seeks to confirm that the concrete uses is in line with DoA standards was signed by the applicant's wife.

## 7.2. Applicant Response

- It is stated that the construction started as the landowner received erroneous advice that planning permission was not required. It is submitted that all parts including concrete were certified by the NSAI and the correct certificates were supplied to the planning authority.
- It is submitted (solicitors letter attached to this end) that there was a disagreement between the applicant and appellant and this is the root cause of the appeal.
- It is acknowledged that Caroline Doyle is the wife of the applicant but states that Ms. Doyle is a director of Doyle Concrete and has responsibility for all aspects of certification of products. In a follow-on letter, a further certification is provided by Doyle Concrete in relation to the concrete used in the slatted tank.
- It is claimed that the entire objection is based on hearsay and is not related to planning grounds.
- Photographs are attached with regard to the construction of the slatted shed.

## 7.3. Planning Authority Response

- The planning authority states that the certification submitted was considered appropriate and that the tank was constructed in line with DoA standards.
- The Planning Authority was not aware that the certification was reportedly signed by the applicant's wife. Had this issue been raised before the PA made its decision, it would have recommended further independent certification of the slatted tank.
- No animal waste run off from the site onto the public road was observed during the PA's site inspection.

## 7.4. Observations

None on file.

## 8.0 Assessment

8.1. Having inspected the site and reviewed the file documents I consider that the proposed development can be addressed under the following headings:

- Principle of development
- Construction issues
- Pollution and amenity
- Conservation issues
- Appropriate Assessment
- Other issues

8.2. Principle of development

The appeal site is in a rural area without specific zoning designations or controls. In such areas there is a general presumption in favour of agricultural buildings subject to appropriate design and environmental considerations.

I note that the general area has a very high population density for a 'rural' area, no doubt a result of its close proximity to the main road to Waterford City, which is less than a thirty-minute drive. There are two rural clusters - Luffany, and the cluster around the RC church to the south, which seem to date to the 19<sup>th</sup> Century. The site is also in very close proximity to an older cottage, which is not part of the landholding.

The complex of shed buildings appears to be very long established on the site, and appears in the oldest OS plans for the area. On the south-eastern corner is an abandoned dwelling, which according to the NIAH dates to around 1790-1810. At some stage in the past the local road has been straightened – there is a small residual access loop for the appeal site and closest two dwellings, this appears to have been the original road alignment. This new road alignment seems to have cut the appeal site off from a pond to the north-west, which seems to have originally been part of the farm complex.

I would consider that in the context of development plan policy, the historic use of the site, and the nature of the local area the proposed development should be considered favourably, having regard to amenity and pollution issues.

### 8.3. Construction issues

The appellant has argued that the slatted shed was built in a substandard manner, with both the concrete slats and the base being constructed from faulty and poorly laid concrete. In normal circumstances, this is not a planning issue, but there is a general requirement that the planning authority have regard to Department of Agriculture guidance on such matters, with the quality standards set out in this guidance and NSAI standards needing to be certified to ensure that the facility will not cause pollution.

I note that the planning authority granted permission on the basis of an initial memo from the environmental engineering section that stated there was no objection – but a follow-on subsequent memo requested additional clarification on the certification for the concrete. The planning authority also acknowledged that they were unaware that the certification was signed by the applicant's wife, which is stated to be a potential conflict of interest. I would note that I accept that she is the person responsible for certification from the supplier, but it is certainly reasonable for the planning authority to seek further clarification to ensure that the concrete is certified as required. The applicant submitted a revised certification with the appeal response, although I would question how the material could be certified again so long after it has been laid.

I further note that the appellant submitted that faulty shuttering led to a badly constructed tank. I note from the photographs submitted by the applicants in their response that bulging at the base is visible, and it is acknowledged that the shuttering was faulty, but it is argued that this has simply resulted in thicker concrete.

It was not possible during my site visit to make any meaningful assessment of the structural integrity of the tank. I would be inclined to the view that the 'bulge' shown in the photographs is not structurally significant on the basis that it was the internal shuttering that shifted – once the external shuttering was in place, there should be sufficient concrete to ensure the integrity of the tank.

There are a number of engineering methods by which a tank can be tested post-construction for integrity, although most would require internal access which is obviously not feasible when the tank is full. A very simple test would be to excavate



a small void on the outside of the tank next to the bulge and visually inspect to see if there is any leakage into surrounding subsoils.

To resolve this issue, I would recommend that if the Board is minded to grant permission for the retention of this pit, then a certified independent engineers report be submitted that there is no visible evidence of leakage from this part of the tank.

#### 8.4. Pollution and amenity

There is a pond across the road which seems to have been in existence since the earliest OS plans, although it is not clear whether this is a natural feature or was associated with the older farmhouse. There are no surface watercourses in the vicinity and no visual indications of a high watertable or poor drainage. There are no records of floods on or in the vicinity of the site. The farmland in the area appears generally to be well drained. The GSI database indicates that the lands are on deep glacial till deposits derived from Devonian sandstones, over sandstone, shale and thin karstic limestone bedrock. The nearest well or spring is about 200 metres to the east – the GSI database states that this is a 21 metre deep borehole with a depth to bedrock of 18 metres and extracts from the Clonmel groundwater body. The site is within the Carrick-on-Suir groundwater body (the boundary with the Clonmel groundwater body is just a few metres to the north). There is no direct information on file, but it would seem the area is served by a public water supply.

The appellant states that there is a visible overflow at times over the road to the pond and road drains to the north. I did not see any immediate visual evidence of this during my site visit. If there is a flaw in the construction, then the problem would likely be for groundwater, as the land seems moderately permeable.

As the area does not appear particularly vulnerable to pollution I would consider that the principle of the development is acceptable if it is constructed to Department of Agriculture and NSAI standards. I would therefore conclude that subject to the condition I have recommended in the subsection above, it would not cause unacceptable levels of pollution.

The proposed development is very close to two dwellings and in an area with a dozen or more houses within 200 metres. It is not ideal to have an intensive livestock facility so close to dwellings, but as the site appears to have been used for farm purposes for at least 2 centuries I would consider this to be a generally established use and appropriate for a rural area, and as such I would consider that

subject to appropriate controls it would not have an unacceptable impact on local amenities.

#### 8.5. Conservation issues

The dwelling on the south-west corner of the site is not a protected structure (although the development plan is somewhat ambiguous on this, it notes a number of vernacular houses in the 'loop of the Suir', without providing a detailed plan), but is listed on the NIAH as being of regional importance, and dating from around 1790-1810. Paragraph 8.3.5.2 of the development plan states that it is an objective to include structures that have been identified in the NIAH of national, local or regional importance for listing. The NIAH describes the house as following:

*Detached four-bay two-storey farmhouse, c. 1800, with flat roofed entrance windbreak to ground floor on an elliptical plan. Now disused. Pitched slate roof with clay ridge tiles, red brick running bond chimney stack, and no rainwater goods on rendered eaves. Flat rendered roof to windbreak. Unpainted roughcast walls over random rubble stone construction. Square-headed window openings with cut-limestone sills, six-over-six (ground floor) and six-over-three (first floor) timber sash windows having iron bars with one two-over-two timber sash window to ground floor. Square-headed door opening with step, and remains of timber door. Interior with timber panelled reveals/shutters to window openings. Set in own grounds.*

The appraisal states:

*Although having fallen into disrepair following a prolonged period of disuse a pleasantly-composed modest-scale farmhouse retains the original composition attributes including the pleasing balanced arrangement of small-scale openings, the windbreak reminiscent of a type associated with the Callan region, and so on together with substantial quantities of the original fabric both to the exterior and the interior, thereby maintaining much of the integrity of the site while making a positive contribution to the aesthetic appeal of the local landscape.*

A cottage from around the late 19<sup>th</sup>-early 20<sup>th</sup> Century sits behind this older building, although is not within the property ownership – this building is not on the NIAH. Although the former house within the site is not on the list of protected structures, I would concur with the appraisal of the NIAH that it is an important element in the

local landscape, and quite well preserved, notwithstanding its very poor state of repair.

Notwithstanding this, the proposed works do not substantially alter the structure directly. It is pretty clear that the house not likely to be brought back into residential use in the near future, and the development of the site for cattle feeding and wintering is likely to preclude this, so the future of the structure looks bleak. I do not consider that it would be appropriate to set a condition relating to this building, having regard to the nature and scale of the proposed development, although the Board may wish to consider a condition such that no animals be permitted within the former house.

#### 8.6. Appropriate Assessment

The planning authority carried out a screening which concluded that no NIS was required. The only SAC in the vicinity is the River Suir SAC, site code 002137, which is designated for a wide range of freshwater and woodland species, most notably vertebrates and invertebrates associated with good quality fresh water. The designation covers the river and banks and some associated riverine wetlands. The site is within a meander of the river (but not in the floodplain), with the closest part about 1.5 km distant. There are no watercourses in the vicinity of the site, so any pathway would be via the groundwater body in the deep bedrock, which appears to be in hydraulic continuity with the river. While a leaking slatted tank could potentially contaminate groundwater, I would consider that if it is built and managed in accordance with its certification and Department of Agriculture regulations and NSAI standards, then there would be no effect on the conservation objectives of the SAC. I therefore consider it reasonable to conclude that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on European Site no. 002137 or any other European site, in view of the site's Conservation Objectives, and so a stage 2 Appropriate Assessment (and submission of a NIS) is not required.

#### 8.7. Other Issues

The proposed development is subject to a development contribution under the adopted Scheme of €585.00. I do not consider that there are any other planning issues raised in this appeal.

While this appeal has focused on the retention of the slatted tank, it also includes a new shed – essentially an extension of the existing hay shed. Having regard to the historic use of the site for agricultural purposes and the visual prominence of the existing shed structure I do not consider that this raises any planning issues.

## 9.0 Recommendation

I recommend that subject to the conditions set out below the Board grant permission for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

Having regard to the historic use of the site for farming and related purposes, it is considered that subject to the conditions set out below the proposed development would not seriously injure the amenities of the area or cause pollution and would otherwise be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Within 6 months of the date of this decision, the applicant shall submit for the approval of the planning authority a report by an independent engineer to confirm the structural integrity of the tank at the point where the 'bulge' is indicated on the photographs submitted with the response to the appeal.

In the absence of such approval, the use of the tank and shed for agricultural purposes shall cease, pending the approval by the planning authority of any necessary remediation measures to ensure the tank is completed in accordance with Department of Agriculture and NSAI regulations and standards.

**Reason:** In the interest of preventing pollution to groundwater and ensuring the appropriate completion of the works.

3. 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 a 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 and public health.

4. The slatted shed shall be used only in strict accordance with a management schedule which shall 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, as amended, 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 (including the public road, where relevant).

**Reason:** In order to avoid pollution and to protect residential amenity.

5. 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.

6. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.

**Reason:** In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

7. 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, as amended.

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

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, as amended. The contribution shall be paid prior to 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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Philip Davis  
Planning Inspector

13<sup>th</sup> December 2017