



An
Bord
Pleanála

Inspector's Report PI08.248904

Development	Oyster processing shed, wastewater treatment system and associated works.
Location	Ardcost, Caherciveen, Co. Kerry.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	16/1080.
Applicants	Daniel Mahony and Brian McCarthy.
Type of Application	Permission.
Planning Authority Decision	To grant permission subject to conditions.
Type of Appeal	Third Party v. Condition.
Appellants	Gerald and Maryanne McGill.
Observers	None.
Date of Site Inspection	5 th October, 2017.
Inspector	Brendan Wyse.

1.0 Site Location and Description

- 1.1. Ardcost is a relatively remote, coastal, rural area approximately 4 kilometres south-west of Caherciveen, County Kerry. Access from the N70 is via the R565 and a local road. The area has the characteristics of a peninsula with scenic views across the Derreen River Mouth to the east, and the Portmagee Channel, to the north and west towards Valentia Island.
- 1.2. The site has a stated area of 1.29 hectares and comprises a number of fields close to the shoreline and a gravel track from the local public road. The fields slope gently downwards towards the shoreline. The two fields nearest the access track are generally open with trees and mixed hedgerows to the rear (north-west). A drain runs along the site frontage to the access track and discharges across the shoreline to the sea. The opposite side of the access track is generally defined by sod/stone bank and hedgerow.
- 1.3. Land Registry Maps submitted with the planning application indicate the full extent of the applicants' landholding, extending generally westwards along the full length of the access track. The holding includes a joinery workshop located approximately 200 metres south of the location for the proposed development. Otherwise the general vicinity comprises agricultural lands with a scattering of houses and farm buildings. The entrance to the holding is splayed with double farm gates set back off from the local public road. The public road is relatively straight in the vicinity and has a carriageway width of approximately 4 metres.

2.0 Proposed Development

2.1. Application Lodged 3rd November, 2016.

- 2.1.1. The application for permission was first lodged with the planning authority on 3rd November, 2016. The proposed development was stated to include the following:
 - (i) A commercial shed for oyster processing, including an office.
 - (ii) Wastewater treatment system (WWTS) and percolation area.

(iii) Upgrade existing access road.

(iv) Associated site works.

2.1.2. The drawings submitted indicate the shed located in the lower, northernmost, field with an associated yard area. The shed would have a total floor area of 425 square metres, comprising a phase one of 275 square metres and a phase two of 150 square metres. The shed would be of an agricultural type construction, including concrete block/mass concrete lower walls with an earth tone metal cladding system above. Maximum height would be 8.860 metres with a lower (phase two) section to 6.500 metres.

2.1.3. Cover letters with the application include the following information.

- The applicants have a foreshore licence for oyster farming (Reg. Ref. No. T06/374A).
- The shed would be used for processing and machinery storage.
- The oyster farm is a 6 hectare site producing *Crassostrea gigas*, a pacific oyster with a growth cycle of 3 years (seed to market).
- The farm would employ 2 full-time and 3 part-time staff.
- It is indicated that the finished floor level of the shed has been lowered by over 2.250 metres from a previous proposal in order to reduce the visual impact. The new level is 73.750 metres SD.
- The stepped design is stated to replicate farm buildings. Existing trees and shrubs are to be retained and additional landscaping carried out.
- Collection of oysters by truck will take place approximately 3 times a year depending on the success of the cycle.
- The road would be upgraded with a dust free stone chip surface with additional drainage to the sides. Two 10 metre long laybys would be constructed.
- The proposed wastewater treatment system would be solely for domestic use and no liquid waste from the oyster process will be discharged to it.
- There is a public water supply available from the adjacent joinery workshop.

- 2.1.4. Documentation submitted with the application also included a site characterisation form and associated details. Proposed to install a packaged WWTS discharging to a raised/constructed polishing filter via a UV treatment unit (because of close proximity to shoreline) – details included.

I note that Drg. No. DOMARI, entitled 'percolation details', appears to show the correct proposed location and layout for the WWTS, notwithstanding that Drg. No. K1906-001-B, entitled 'Site Layout', shows it in a different location. Planning Authority Condition No. 6 also refers to the former.

2.2. Further Information

- 2.2.1. On 4th January, 2017 the planning authority requested further information relating to the processing of oysters, including water use and wastewater treatment and disposal, as well as details in relation to the shed, yard and access road.

- 2.2.2. Further information submitted on 11th May, 2017 included:

- A discharge licence for the discharge of oyster wash water obtained on 3rd May, 2017 – copy enclosed.
- Revised site layout plan indicating concrete hardstanding area, parking, turning area and drainage.
- Landscape plan and details of colour scheme for the shed.
- Drawing indicating proposed laybys on the access road. Finished floor level of shed changed slightly to 74.000 metres SD.

2.3. Clarification of Further Information

- 2.3.1. Submissions to the planning authority on 22nd May, 2017 and 1st June, 2017 include section drawings through the site and revised public notices (indicating significant further information). The section drawing submitted on 22nd May, 2017 shows the finished floor level of the shed at 72.000 metre SD. This level is repeated in notation on the drawing submitted on 1st June, 2017 but the sections indicate a finished floor level of 74.000 metres SD.

2.4. Unsolicited Further Information

- 2.4.1. A submission to the planning authority on 9th June 2016, in response to submissions by observers, includes amendments to the hardstanding area and road, stated as:

- Reduce hardstanding area by 2.5 metres.
- Move the road 2.5 metres to the west.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The decision to grant permission is subject to 11 conditions. These include:

1. Standard condition referencing all further information submissions.
4. Proposed shed to be as per drawings received on 3rd November, 2016 with cladding as per details received on 11th May, 2017.
5. Finished floor levels to be as per site section drawing received on 1st June, 2017.
6. Standard condition re WWTS.
8. Proposed access road to be relocated 2.5 metres to the west and the concrete apron to be reduced by 2.5 metres as per the details received on 9th June, 2017. Revised drawings required.
9. Any external lighting to be cowled away from the public road and not visible from any point more than 100 metres away.
10. Landscaping to be as per details received on 11th May, 2017.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for planning authority decision. Includes:

- Although the proposed structure is large and will have a visual impact, satisfied that all measures have been taken to integrate it into the landscape.
- EIA screening – no EIA required.
- AA Screening – AA not required (note concluding statement appears to be in error).

3.2.2. **Other Technical Reports**

Environment Section/Environmental Services (Reports dated 11th June 2017, 29th May, 2017 and 2nd December, 2016).

No objection following further information submissions. Includes reference to discharge licence and a site suitability report in relation to the proposed WWTS.

Biodiversity Officer (reports dated 31st May, 2017 and 6th December, 2016).

No further comments following further information submissions and issue of discharge licence.

County Archaeologist

No mitigation required.

Building Control

No objection.

3.3. **Prescribed Bodies**

Inland Fisheries Ireland (IFI)

Advice in relation to the need for good management practices during construction to prevent discharges of silt or hydrocarbon contaminated waters.

An Taisce

Submits that the site can be seen from the N70 Ring of Kerry, albeit in distant views. As the shed could cut the water line it should be painted a neutral colour and some planting would help integrate it into the surroundings. Submits that suitable effluent treatment is essential.

Department of Culture, Heritage and the Gaeltacht

I note that the planning authority referred to application to the department but no comments appear to have been received.

3.4. Third Party Observations

- 3.4.1. This was lodged on behalf of Gerald and Maryanne McGill, the appellants in the appeal. They are the adjacent landowners – to the east of the access track. They state that they fully support the development in principle.
- 3.4.2. The observers submit that the ‘folio’ boundary between the landholdings is the centre line of the access road. By reference to the applicants’ site layout plan Drg. No. K1906-020-C, submitted as Further Information on 11th May 2017, they make a number of suggestions to ensure that there would be no interference with the drain on the eastern side of the access road, serving their lands. They also suggest that the demarcation between the proposed yard and the access road be maintained.

4.0 Planning History

P.A. Ref. 16/439

Previous application for similar development lodged 11th May, 2016 and subsequently withdrawn.

5.0 Policy Context

5.1. Development Plan

5.1.1. Kerry County Development Plan 2015 – 2021

Zoning: Rural General.

These areas constitute the least sensitive landscapes and are indicated as having a higher capacity to absorb development. Development should be integrated into surroundings to minimise the effect on the landscape and to maximise development potential (Section 12.3.1).

Views and prospects to be preserved apply to the N70, the R565 (mainland) and the R565 (Valentia Island). Objective ZL-5 refers.

The Plan contains specific objectives to support the sustainable development of the aquaculture sector. Objectives NR-20, 22 and 27 are of particular relevance.

5.2. **Natural Heritage Designations**

The adjacent waters of the Derreen River Mouth and the Portmagee Channel form a part of the Valencia Harbour/Portmagee Channel SAC.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The appeal is lodged on behalf of Gerald and Maryanne McGill, the adjacent landowners – to the east of the access track. The appeal refers to Condition No. 8 of the planning authority decision which essentially refers to the treatment proposed to the access road and concrete apron and requires revised drawings to be approved by the planning authority. The appellants are excluded from the process of approving any such drawings save by submitting an appeal.
- 6.1.2. As previously indicated in their observer submission to the planning authority (see Section 3.4 above), the appellants are concerned to ensure no interference with the drain on the eastern side of the access road, and that serves their lands, and that the demarcation between the access road and the proposed yard be maintained. They reiterate their support for the proposed development in principle.

6.2. **Applicant Response**

Includes:

- Supporting submission in relation to; development plan policy; views/prospects; environmental considerations; socio-economic case; and traffic.
- Acknowledgement that the appellants own half the width of the access road close to the site.
- Revised site location map and site layout drawing outlining the boundaries of the site and excluding the appellants' land.
- The concrete apron will be reduced to be totally clear of the road.
- The intended approach is guided by the principle of minimum intrusion on existing fences and foliage and with no impact on the appellants' property.

6.3. **Planning Authority Response**

None received.

6.4. **Appellants' Further Response**

Includes:

- The appellants' concerns remain the same re. the proposed removal of the existing demarcation between the yard and the road and the proposed piping/backfilling of the open drain on the eastern side of the road.
- By reference to an attached longitudinal section drawing it is submitted that adjustments to the road, including a retaining wall at the western side and a partial lowering of the road, are clearly proposed.
- The road will need some regrading and resurfacing to cater for articulated lorries. It will also require edging and drainage works on both sides. The appellants have no issue with this but require clarity.
- Revised drawings illustrating appropriate details are required

7.0 **Assessment**

7.1. **Introduction**

7.1.1. The Board will note that this is a third party appeal against Condition 8 of the planning authority decision only and that the appellants otherwise indicate their support for the proposed development. The appeal, therefore, falls to be considered under the terms of section 139 of the Act, in the first instance.

7.1.2. Given the scope of the condition in question, which refers to details regarding vehicular access to the site, and the appellants' reiteration of support in principle for the proposed development, I consider that the Board should confine itself solely to consideration of the condition.

7.1.3. The issues, therefore, addressed in this assessment are:

- Planning Authority Condition No. 8
- Appropriate Assessment

7.2. Planning Authority Condition No. 8

- 7.2.1. As indicated at Section 3.1.1 above Condition 8 of the planning authority decision requires the access road to be relocated 2.5 metres to the west and the concrete apron to be reduced by 2.5 metres as per the details received by the planning authority on 9th June, 2017. Revised drawings are required to be submitted for approval.
- 7.2.2. I concur with the appellants that the issue of the concrete apron and its relationship to the access road, and the nature and extent of associated works, remains very unclear. In this it is difficult to reconcile the Revised Site Layout, Drg. No. K1906-020-C, submitted to the planning authority on 11th May 2017, with the section drawings, Drg. No. K1906-040-D, submitted to the planning authority on 22nd May, 2017 and on 1st June, 2017. Assuming the latter section drawing correctly illustrates what is proposed, i.e. a finished floor level (FFL) for the shed of 74.000 metres (and ignoring the annotated reference to 72.000 metres) and noting that this is the drawing referenced in planning authority Condition 5, it is apparent that there would be a significant drop required from the access road onto the concrete apron. The matter, in my view, is not clarified in the applicant's unsolicited submission to the planning authority on 9th June, 2016 or in the applicant's appeal response.
- 7.2.3. The general intent, however, of both parties to the appeal does appear to be similar and compatible i.e., that any impact on the access road and associated drainage is minimised. I consider, therefore, that the condition can be amended to reflect mutual requirements and to be stated in a manner that brings sufficient clarity.
- 7.2.4. Given the significant ground level changes envisaged, in constructing the shed with a finished floor level at 74.000 metres and the associated concrete apron at a similar level, the principal change required to the condition is to stipulate that the vehicular access be located north of the development where the respective ground levels of the road and the adjacent field are similar. This would facilitate an at grade access thus minimising construction interventions. Piping of the roadside drain should be confined to that length necessary to facilitate the access. The concrete apron should be required to be set back sufficiently to ensure no interference with the existing road structure or the roadside drain.

7.2.5. I recommend, therefore, that the Board direct the planning authority to amend the condition accordingly.

7.3. **Appropriate Assessment (AA)**

7.3.1. The Board will note that the planning authority screened out any requirement for AA in relation to the proposed development – see Section 3.2.1.

7.3.2. The relevant Natura Site in this instance is the Valentia Harbour/Portmagee Channel Sac (Site Code: 002262). The site encompasses the entirety of the waters between Valentia Island and the mainland, including the Derreen River Mouth and shoreline adjacent to the development site.

7.3.3. Detailed conservation objectives for the site have been published. These refer to the following qualifying interests:

- Tidal mudflats and sandflats.
- Large shallow inlets and bays.
- Reefs.

7.3.4. In terms of the matters under consideration here, and which relate solely to Condition 8 of the planning authority decision dealing with access arrangements to the development site, there is clearly a potential pathway to the SAC via the land drain that runs along the site frontage. Construction works associated with forming the new access could potentially generate increased sediment discharge and/or hydrocarbon leakage to the drain and hence to the SAC.

7.3.5. I am satisfied, however, given the limited scope of the proposed works, as required in the revised condition, and subject to good construction practice, and which can be considered integral to the said works, that no significant effects on the SAC are likely to arise.

7.3.6. It is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed works, individually or in combination with other plans or projects, would not be likely to have a significant effect on European Site No. 002262, or any other European Site, in view of the site's conservation objectives. A Stage 2 AA (and submission of an NIS) is not, therefore, required.

8.0 Recommendation

8.1. I recommend that the Board directs the planning authority to amend Condition 8 of its' decision to read as follows:

(i) The layout of the vehicular access to the development and the concrete apron shall be revised so as to minimise interference with the existing access road and associated drainage in the vicinity of the site. The revised layout shall incorporate the following:

(a) Taking account of the proposed finished floor level of the processing shed and the proposed level of the concrete apron vehicular access to be formed north of the development where the levels of the road and the adjacent field are similar. The access shall be a maximum of 6 metres in width. The roadside drain shall be piped only insofar as is necessary to facilitate construction of the access.

(b) The concrete apron set back a minimum of 5 metres from the western edge of the access road or such further distance as is required so as to ensure no interference with the existing road structure or roadside drain.

Prior to the commencement of the development drawings illustrating these revised arrangements shall be submitted to the planning authority for written agreement.

(ii) Proposed upgrade works to the access road as far as the public road shall be carried out prior to the commencement of construction of the processing shed.

Reason: In the interest of clarity and to minimise impacts on the environment.

9.0 Reasons and Considerations

Having regard to the limited scope of the works the subject of Condition 8 and to the terms of the grounds of appeal it is considered that the amended wording to the said condition is an appropriate response and brings sufficient clarity to the matter raised. Subject to the amended condition it is considered that the proposed development would be in accordance with the proper planning and sustainable development of the area.

Brendan Wyse.
Assistant Director of Planning.

16 January, 2018.