



An
Bord
Pleanála

Inspector's Report ABP-300190-17.

Development	To retain and complete replacement shed, alterations and extension to existing milking parlour and connect to existing associated services.
Location	Tirnawannagh, Bawnboy, Belturbet PO, Co. Cavan.
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	17/323
Applicant(s)	Austin Cassidy.
Type of Application	Retention and permission to complete.
Planning Authority Decision	To grant with conditions.
Type of Appeal	Third party.
Appellant(s)	R. Lee.
Observer(s)	None.
Date of Site Inspection	21 st February 2018.
Inspector	D. M. MacGabhann

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1.0 Site Location and Description

- 1.1. The 0.485ha appeal site is situated c.7.5km to the south of Swanlibar and c.3km to the west of the village of Bawnboy, Co. Cavan. The site lies immediately west of a minor public road (L-1034-0) and comprises an existing farm yard, which falls gently away from the public road.
- 1.2. There are three principle structures on the site:
 - To the south east, directly adjoining the public road, is a single storey calf house with a painted corrugated roof.
 - To the east is a partly constructed agricultural shed (the subject of this appeal). Sitting within the framework of this structure is a milking parlour and adjoining hayshed/agricultural store.
 - To the south west is a slatted, cattle shed. It has an underlying slurry tank.
- 1.3. To the east of the appeal site is an agricultural dwelling (the applicant's) and to the north east of the site, surrounding the residential dwelling and on rising topography, is a mature woodland.
- 1.4. Surface water on site appears to follow the fall of the site, with water discharged into the adjoining agricultural lands. Effluent from the slatted shed is directed to the underground storage tank. To the south of the site is a drainage ditch, located on the southern side of a hedgerow. It discharges to a small stream c. 25m to the west of the site, which itself discharges into Bunerky Lough c. 300m to the south west of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development, as revised by way of further information submitted on the 25th September 2017, comprises:
 - The retention and completion of a replacement agricultural shed,
 - Alterations to, and extension of, the existing milking parlour, and
 - Connection to existing associated services.

- 2.2. The plans for the development indicate that the previous agricultural building on the site extended to 232.47 sqm (12.915m x 18m) m and comprised a curved roof over half of the structure and a single pitch roof over the remaining half.
- 2.3. The shed to be retained has a floor area of 268 sqm (14.926 x 18m) and a pitched roof. It provides an overall increase in floor area of 36m². The maximum ridge height of the previous structure was 6.9m (to top of curved roof) and the maximum height of the proposed roof is 6.644m (at apex).
- 2.4. A Farm Developments Form accompanies the application for the development. It:
- Describes existing and proposed stocking rates, lands available for slurry spreading and details of storage facilities.
 - Indicates that there would be no change in stock numbers, as a consequence of the development (i.e. the number of dairy cows, young cattle and calves is to remain at 44), and no change in existing waste storage facilities at the farm. (Existing storage facilities have a stated capacity of 383m³, catering for slurry, soiled water and dairy washings, compared to a requirement of 224.84m³).
- 2.5. The revised Site Layout Plan (11th September 2017) indicates that surface water would be directed to underground storm drains around the perimeter of the site to discharge to the field ditch to the south of the site.
- 2.6. In addition, the applicant states that:
- The concrete open area to the south east of the buildings¹ comprise clean concrete with vehicle access only.
 - All animals are housed in the roofed areas, comprising the slatted shed or milking parlour.
 - All milk wash and manure waste is piped to the underground slurry tanks.
 - The concrete aprons to the north west of the buildings are for cattle transit only between the sheds and the exit to the fields (i.e. there is no holding of cattle in this area).

¹ The applicant refers to the area to the 'west' of the buildings. However, North is shown incorrectly on the drawings.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 17th October 2017, the planning authority decided to grant permission for the development subject to 9 conditions. These include the following:

- No. 2 – No surface water to flow onto public road. Surface water to be collected by a surface water drainage system and discharged to nearby watercourses.
- Nos. 3 and 4 – Shed and milking parlour to be designed and constructed to Department of Agriculture and Food (DAF) Specifications.
- Nos. 5 and 6 – Effluent and soiled water to be directed to and collected in an effluent storage tank to DAF specifications; effluent and soiled water not to flow onto adjoining property, enter any watercourse or overflow from storage tank.
- No. 7 - Uncontaminated surface run-off (roofs, paved areas), to be collected separately from effluent and disposed of to an approved watercourse in accordance with DAF specifications.
- No. 8 – Effluent shall not be applied to land where there is a risk that it will run from the land to any waterbody.
- No. 9 – The disposal and/or disturbance of any asbestos in the existing building structure shall be carried out in accordance with the appropriate regulations.

3.2. Planning Authority Reports

Planning Reports

3.2.1. There are two Planning Reports on file. The first (22nd August 2017) refers to the policy context for the development, the submission made and report by Environment Section. It considers that the development is acceptable, in principle, on the site, is in keeping with the existing structures and gives rise to no traffic effects (no changes proposed). The report refers to the location of the development within the buffer

area of Lough Oughter & Associated Loughs SAC and SPA but considers that the proposed development is of sufficient distance from the site (c.9.5km) to not have an impact on the qualifying interests of the site. It considers, therefore, that an Appropriate Assessment is not required.

- 3.2.2. Having regard to the matters raised in submissions and the report by Environment Section, it recommends further information in respect of stocking rates etc. for the farm (completion of an application form for the Construction of Farm Developments) and details of means to manage surface water and control pollution.
- 3.2.3. The second report (13th October 2017) refers to the further information submitted and considers that, having regard to this and subject to the conditions recommended by the Environmental Services, the development will not result in the pollution of watercourses. The report recommends a grant of permission subject to 9 conditions.

Other Technical Reports:

- Environmental Services (8th August 2017) – Recommends further information (planning application form for the construction of farm developments).
- Environmental Services (13th September 2017) - Planning permission be granted subject to conditions, including those for the management of effluent or soiled water.

3.3. Observations

- 3.3.1. There is one observation on file. It makes the following comments:
- A portion of the recently constructed shed is within 10m of the public road and contravenes building permit regulations.
 - The application has been submitted following enforcement proceedings (Enforcement Ref. 17-047). Is the application in accordance with the planning authority's advice to remedy the unauthorised works?
 - Reference is made to connecting the newly constructed elements to existing associated services. There are no technical specifications regarding the design, capacity or condition of the existing pollution prevention measures or capacity required for enlarged shed areas. Such details would be necessary given the short distance between the site and nearby lake and watercourses.

4.0 Planning History

- 4.1. The Planning Report refers to the letter issued by the Enforcement Section in respect of the unauthorised works at the site. This is also referred to by the observer (Enforcement Ref. 17-047). (No copy of file).

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Cavan County Development Plan, 2014 to 2020, acknowledges the important role agriculture has played and continues to play in the economy of the county. Policies of the Plan, therefore, seek to:
- Support agricultural development, whilst ensuring that development will not have an undue negative impact on the visual amenity of the countryside or adversely affect soil, waterbodies, wildlife habitats and areas of ecological importance (Policy EDP2 and EDP3 and Objectives EDO5 and EDO6).
 - Ensure that all agricultural activities comply with legislation on water quality (Objective EDO4).
 - To protect and improve all drinking water, surface water and ground waters in the County by implementing the EU 'Water Framework Directive,' and any other associated legislation (Objectives PIO88 and P1091).
- 5.1.2. Policies of the Plan seek to protect the natural heritage of the County, including, biodiversity, national and European sites of nature conservation interest and landscape character (NHEP1, NHEP5, NHEP9, NHEO4, NHEO5 and NHEP19).
- 5.1.3. The appeal site is situated in the 'buffer' area surrounding Lough Oughter and associated Loughs SAC (site code 000007), c.9km to the west of the boundary of the site (see attachments). The appeal site is removed from any landscape of landscape of high interest or value.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appellant makes the following comments:

- Lack of clarity in application documentation – The application may be invalid. The layout plans superimpose retention elements (yellow) over existing elements (blue) and only refer to an extended (pink) 2m milking parlour. No plans have been submitted of the demolished shed. The ‘replacement shed’ is substantially different to the old shed and has been constructed closer to the public road (within 3m). The old shed had the benefit of quasi-planning status given the year of erection. Once demolished, did this benefit expire or transfer to the new shed, despite its different design/scale?
- Inadequate environmental risk assessment – The application does not address pollution control measures adequately. The applicant’s drawings indicate all run off from concrete areas and yard flows into underground slurry stores. In the event of prolonged rainfall, have the existing slurry tanks the capacity to accommodate this without causing a pollution spill, given the proximity of the yard to a watercourse and lake. Bunerky Lough has seen water quality deteriorate over recent years. According to a recent EPA report on water quality, such declines in lake water quality are mainly due to local farming practices and septic tank run-off from one off dwellings.
- Condition nos. 5, 6 and 7 – Have the potential for misinterpretation (what paved area is clean or soiled). These types of conditions are unenforceable and could lead to a pollution event, even though the applicant could be in substantial compliance with them. All surface waters from hard standing and other trafficked areas should be collected and treated appropriately to eliminate potential for contamination.
- Condition no. 2 – Is not relevant. It is far more likely that excess surface water from the public road will flow into the yard area and slurry stores. Open access from yard and road areas directly to watercourses cannot be deemed appropriate given the prevailing conditions and sensitivity of nearby watercourses and lake.

- Condition of slurry stores – Applicant has failed to report on current condition. Given the age of some of these tanks and their interaction with corrosive slurry, silage and milk effluents, the integrity of these tanks would need to be assessed.

6.2. Applicant Response

6.2.1. The applicant makes the following responses to the appeal:

- Validity of appeal – The appellant has not clearly stated his/her name and the appeal is invalid.
- Lack of clarification in application documentation:
 - Plans and elevations of structures demolished/to be demolished have been submitted and are clearly identified in plans and drawings.
 - The replacement shed is different to the old shed, hence the application for planning permission. The shed is no closer to the public road than the one it replaces. The planning authority adjudicated on, and were satisfied with, the plans submitted.
 - Planning status of existing shed – The planning authority has deemed that the application is for a replacement building within an existing farmyard and this is appropriate.
- Inadequate Environmental Risk Assessment:
 - The proposed development is for a replacement structure i.e. there is no intensification of activities.
 - The proposed development relates to an investment by the applicant to improve the quality of building structures on the farm and daily work practices, with a view to minimising any potential run-off and adverse environmental effects.
 - The applicant has demonstrated a requirement for waste storage of 264m³. The applicant is involved in seasonal milk production so there is no production of dairy washings in November to January, i.e. for most of the closed period. There is no stock movement across the

yard, so no production of soiled water and all clean yard water can be diverted as per PA conditions. Storage facilities are therefore adequate.

- Condition nos. 5, 6 and 7 – There is specific legislation in respect of these conditions under S.I. 31 of 2014. The applicant is therefore under requirement to collect all soiled waters, to minimise areas of soiled water and to prevent clean water from becoming soiled. The conditions are therefore in line with legislative requirements.
- Condition of existing structures – The applicant is seeking to improve existing structures on the farm. No additional soiled water will be directed to the existing storage tanks.
- Benefits – The proposed development would provide an appropriately located, designed, landscaped and sustainable farm development, suitable to the site, scale of the adjoining landholding and completed to the highest welfare and environmental standards, on an existing agricultural area where such use (livestock/agriculture) is predominant, traditional and appropriate.

6.3. Planning Authority Response

6.3.1. The planning authority respond as follows to the appeal:

- Lack of clarity in application documentation – There was an old hayshed on the site (pre-63), which the applicant demolished. Of foot of a complaint a warning letter was issued regarding the construction of a replacement shed. The applicant subsequently lodged the application for retention and completion of replacement shed. The planning drawings clearly show the retention and proposed elements. The planning application was validated in accordance with the Planning and Development Regulations, 2001.
- Inadequate environment risk assessment – There is no slurry storage proposed as part of the development. Details of existing and proposed animal numbers are given in the application documentation and no increase in numbers is proposed. A site layout plan was submitted as part of further information. It indicated existing and proposed surface water management.

Environment Section assessed this further information and recommended a grant of permission subject to environmental conditions.

- Condition nos. 5, 6 and 7 – Relate to soiled and unsoiled water, are clear and unambiguous.
- Condition no. 2 – Relates to prevention of surface water from entering the public road and is included in the interest of traffic safety.
- Condition of slurry stores – All slurry storage must be in accordance with DAF specifications.
- Risk of pollution of waterbodies – Subject to compliance with conditions, the proposed development is not likely to result in pollution of nearby watercourses.

6.4. Observations

6.4.1. There is one observation on the appeal, made by the applicant's sister. It describes the farm and awards won by the applicant for a quality milk product (Animal Health Ireland, 'Milking for Quality' awards in 2013, 2015 and 2016) and the rationale for the development, to improve conditions on the farm. It states:

- The applicant is acutely aware of his environmental surroundings and the proximity to Bunerky Lake and has made continuous efforts to reduce the risk of pollutants entering the lake (e.g. all slurry and dairy washings to tank beneath slatted shed).
- In December 2017 the condition of the slurry tank was appraised and was found to show no signs of structural defects or deterioration (report attached to submission).
- Water quality in Bunerky Lake has not changed between 2010-2012 and 2010-2015 (Cavan County Council Reports). The main pressure impact on lake quality in Ireland is elevated inputs of phosphorus. Total phosphorus in Bunerky Lake is 'good'. The lake has been selected in the last decade for the 'World Pairs Angling Championships'.

- Apart from the construction of the slatted shed in 1997 (for which permission was not required), no other construction work has taken place at the farm in the past 50 years.

6.5. Further Responses

6.5.1. None.

7.0 Assessment

7.1. Having regard to the submissions on file, my inspection of the appeal site and the policies of the County Development Plan, I consider that the key issues raised in this appeal relate to the following:

- Validity of appeal.
- Adequacy of application documentation and planning status of original shed.
- Principle of the development.
- Risk of water pollution (including conditions of the permission nos. 5 to 7 and condition of slurry store).

7.2. Validity of Appeal

7.2.1. The Planning and Development Act 2000 (as amended) establishes a third party right of appeal. In this instance the appellant made an initial observation on the planning application and subsequently an appeal to the Board. The appellant's name and address have been clearly stated in correspondence with the planning authority and legitimate planning matters have been raised in submissions. I would accept, therefore, that a valid appeal has been made.

7.3. Adequacy of Application Documentation/Planning Status of Original Shed

7.3.1. The planning application has been validated by the planning authority and, in this regard, I note that plans submitted by the applicant clearly show the location and extent of the previous shed on the site and that these reflect Google street view images of it (attached). The planning authority's response to the appeal stated that

the existing shed on the site prior to 1963, which would provide a legitimate planning status for the original structure. This application is brought forward in respect of the replacement shed and the assessment of it has regard to the planning history of the site and the uses established on it.

7.4. Principle of Development

- 7.4.1. The proposed development comprises the replacement of an existing agricultural shed with a view to improving the condition of the farm. The current Cavan County Development Plan acknowledges the important role agriculture has played and continues to play in the economy and generally supports agricultural development, subject to provisos that it does not have a negative impact on the visual amenity of the countryside or on environmental factors including waterbodies and water quality.
- 7.4.2. The proposed development is situated within an established and working farm yard. I understand from the information on file, and google imagery, that the previous agricultural building on the appeal site comprised a more traditional agricultural structure, with open sides, a partially rounded roof and a marginally smaller footprint of 36sqm. I would accept, therefore, that the previous structure contributed to the attractive group of traditional roadside buildings near the site.
- 7.4.3. The proposed shed has a similar maximum roof height (albeit a pitched roof) to the previous structure and appears, from the information on file and inspection of the site, to be setback from the public road by a similar distance. In addition, the site is situated in a remote rural area, on low lying land and against a backdrop of an established woodland and rising topography. Visually, I would consider, therefore, that the proposed shed, whilst comprising a more modern design, is not substantially larger or more visible than the previous development and does not significantly detract from the visual amenity of the area.
- 7.4.4. Having regard to the rationale for the proposed development, its policy context, location within an established farmyard and similarity in scale and form to the previous structure, I consider that the proposed development is, in principle, consistent with the policies of the County Development Plan for agricultural development, and is acceptable on the appeal site.

7.5. Risk of Water Pollution

- 7.5.1. The appeal site lies c.300m to the north of Bunerky Lough. For the period 2010-2015, the EPA catchments.ie database classified the Lough as having moderate status (lake water quality) with a downward trend in total phosphorus and an upward trend in ammonia (total – as N).
- 7.5.2. S.I. No. 31 of 2014 EU (Good Agricultural Practice for Protection of Waters) Regulations, 2014, provides a basic set of measures to ensure the protection of waters against pollution caused by nitrogen and phosphorus from agricultural sources². For farmers these require, amongst other things, keeping soiled water to a minimum, collecting effluents, sufficient storage capacity to meet minimum requirements in the Regulations (and these facilities must be kept leak-proof and structurally sound) and diverting all clean water from roofs to a clean water outfall. Compliance with the Regulations is linked to the payment of the Single Payment Scheme (and related schemes)
- 7.5.3. The proposed development comprises a replacement agricultural shed. Whilst 36sqm bigger, the agricultural use of the building changes little i.e. comprising a milking parlour and an adjoining shed. Importantly, the applicant states that there is no increase intensification of use i.e. no increase in stock or herd numbers (40 dairy cows, young cattle and calves) and I note that the existing slurry tank provides adequate capacity to cater for this herd size.
- 7.5.4. At the time of site inspection, it was evident that cattle move between the slatted shed and milking parlour via the concrete yard to the north west of the buildings. They also exit the farm yard this way (i.e. when being moved out of the farm yard to pasture). Surface water falling on the concrete areas to the north west and south east of the subject shed and slatted shed, generally follows the fall of the site i.e. moving south westerly, and is directed to the adjoining agricultural land, primarily via overland flow (surface water from the north-western yard area exits the yard via pipe and is discharged into the adjoining field – see photographs). Effluent from the slatted shed falls directly into the storage tanks beneath the shed.

² Explanatory Handbook for Good Agricultural Practice for Protection of Waters Regulations 2014, DAFM/DECLG

- 7.5.5. In the application for the proposed development, the applicant proposes:
- A clear pathway (underground pipe) from the milking parlour to the slatted shed and tank (for washings),
 - A system for directing surface water to a perimeter drains with discharge to a field ditch to the south of the site, and
 - A 'run' to the slurry tank from or across the yard area.
- 7.5.6. From the information presented, it would appear that surface water (including stormwater) is not directed to the slurry tank, but is kept separate from it and that dirty water is directed to the slurry tank. However, it is not clear how the 'runs' to the slurry tank will function or how dirty water arising in the yard area, across which cattle move (e.g. twice/day for milking), and surface water are kept separate.
- 7.5.7. Whilst I am mindful of (a) the guidance set out in the government's Development Management Guidelines, in respect of matters governed by other codes, and (b) the role the Department of Agriculture, Food and Marine plays in the implementation of S.I. No. 31 of 2014, I am also mindful of the Board's responsibilities under Article 5 of the Surface Water Regulations, 2009, which requires that a public body shall not, in the performance of its functions, cause or allow deterioration of the chemical or ecological status of a surface water body.
- 7.5.8. Therefore, recognising the established use of the appeal site, the controls in place on the industry via S.I. No. 31 of 2014, and the responsibilities placed on the Board under the Surface Water Regulations, I would recommend that this matter be addressed by way of condition i.e. that the applicant be required to demonstrate to the satisfaction of the planning authority detailed arrangements for the management of surface and soiled water in the yard areas.
- 7.5.9. Subject to this condition, I am satisfied that the arrangements put forward by the applicant for the management of clean and dirty water, would not result in the pollution of water bodies off site.

7.6. **Appropriate Assessment**

- 7.6.1. The appeal site lies in an established farm yard, the proposed development will result in no increase in animal numbers at the facility and the development itself

incorporates means to manage clean and foul water. Having regard to this context and the location of the proposed development some c.9km upstream of the nearest Natura 2000 site (Lough Oughter and associated Loughs, site code 000007), it is considered that no impacts on environmental factors will arise or therefore that no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. Having regard to the above, I recommend, therefore that retention and permission for the completion of the proposed development is granted subject to conditions.

9.0 Reasons and Considerations

9.1.1. Having regard to the provisions of the Cavan County Development Plan 2014 to 2020, the location of the proposed development on the site of a pre-existing agricultural shed and within an active farmyard, the nature and scale of the development and the proposed means to manage foul and surface water, it is considered that, subject to compliance with the conditions set out below, the development for which retention and permission is sought would not seriously injure the amenities of the area or of property in the vicinity, or give rise to water pollution and would not, therefore, be contrary to the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 11th day of September 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the

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

Reason: In the interest of clarity.

2. Prior to the commencement of development, the applicant shall submit to the planning authority for written agreement, detailed arrangements for the management of surface and soiled water in the external yard areas.

Reason: In the interest of environmental protection and public health.

3. 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.

4. 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.

5. Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: In the interest of traffic safety.

6. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July

2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

Deirdre MacGabhann

Planning Inspector

26th February 2018