



An
Bord
Pleanála

Inspector's Report ABP-300918-18

Development	Erection of an agricultural slatted shed and associated storage area and all associated site works.
Location	Ethelstown, Kells, Co. Meath.
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	KA/171357
Applicant(s)	Jason Geraghty
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Noel Cooney
Observer(s)	None
Date of Site Inspection	10 th May 2018
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 1.91 ha, is located in the townland of Ethelstown, c. 5.6km south west of Kells in County Meath.
- 1.2. The appeal site is located to the rear of the applicant's house and associated agricultural structures. It has direct access to the public road by means of an access lane to the west of the applicant's house. The site is bounded by hedgerows to north, east and west and is unbounded to the south.
- 1.3. The appeal site forms part of a slightly larger landholding, which includes the applicant's house and existing agricultural structures to the north, and a portion of a field to the south. The area is characterised by a mix of residential and agricultural land uses, with a number of large sheds in the vicinity.
- 1.4. The appeal site and surrounding area are relatively level, exhibiting only very slight undulations, and there was no obvious indication of watercourses in the vicinity of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development, as described in the statutory notices, consists of the erection of an agricultural slatted shed and associated storage area and all associated site works.
- 2.2. The proposed slatted shed has a stated gross floor space of 715 sq m. The stated capacity of the proposed slurry storage tank is 310.44 cu m.
- 2.3. The proposed shed has external dimensions of 25.5m by 28.8m with a height of 8.12m. Internally it comprises a creep area, a slatted area over a 2.4m deep storage tank and an internal feed passage area. The slatted area extends to the north and south of the shed, with agitation points at each end of the shed. Three sliding doors are located on both the north and south elevations.

- 2.4. The proposed materials comprise mass concrete to a height of c. 2.2m, with single skin olive green sheeting to the upper walls and roof. Clear inlet ventilation is provided along the east and west elevations.
- 2.5. Externally it is proposed to provide a gravel laneway and a gravel yard area surrounded by a post and wire fence.
- 2.6. The application was accompanied by information regarding existing and proposed livestock numbers as well as tank storage capacity and lands available for slurry spreading.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Meath County Council decided to grant permission and the following summarised conditions are noted:

- C2: Animal wastes to be spread in accordance with EU (Good Agricultural Practice for the Protection of Waters) Regulations 2014.
- C3: Effluents to be held in a manner that prevents run-off or seepage.
- C4: Development shall be constructed and operated such that there will be no pollution of watercourses or reasonable cause for annoyance by reason of smell.
- C6: Development to be designed, sited and constructed in accordance with DAFF Specifications.

3.2. Planning Authority Reports

- 3.2.1. The Planning Officer's report can be summarised as follows:

- The site is not identified as being in a flood risk area.
- Position of proposed shed is sufficiently distant from surrounding properties and dwellings.
- Applicant has provided details of his landholding and this is considered to be of sufficient size for landspreading of effluent.

- Proposed shed is appropriate in terms of design, scale and siting.
- The proposed development, by reason of its distance to surrounding residential properties will not present a negative impact on residential amenity.
- Proposed development is not likely to have a significant effect on European sites and a Stage 2 AA is not required.
- Proposed development is exempt from development contributions.
- Having regard to rural location of site and the established agricultural use of the site, the proposed development would not seriously injure the amenities of the area.

3.3. Other Technical Reports

3.3.1. None.

3.4. Prescribed Bodies

3.4.1. None.

3.5. Third Party Observations

3.5.1. One third party observation was received from the appellant. The issues raised were generally as per the appeal, as well as the following:

- Visual impact of proposed development.
- Holding area constructed without agreement or planning permission.
- Traffic impact from intensification of use.
- Volume of slurry will be excessive for a site of this size.
- Contrary to Development Plan policy regarding noise, air, pollution control, climate change and environmental protection.

4.0 Planning History

4.1 Appeal Site

4.1.1. I am not aware of any recent relevant planning history on the appeal site.

4.2 Surrounding Area

4.2.1. There have been a number of planning applications by the applicant on the lands to the north of the site, as follows:

- **Reg. Ref. KA120304:** Retention permission granted for general purpose agricultural building incorporating under floor slurry tank.
- **Reg. Ref. KA120228:** Incomplete application for retention permission for general purpose agricultural building incorporating under floor slurry tank.
- **Reg. Ref. KA901761:** Permission granted for erection of three dormer windows in roof to front of dwelling.
- **Reg. Ref. KA900045:** Withdrawn application for retention of general purpose agricultural building incorporating under floor slurry tank.
- **Reg. Ref. KA30124:** Permission granted for the construction of a bungalow, septic tank and percolation area.

5.0 Policy Context

5.1 Meath County Development Plan 2013-2019

5.1.1. Section 10.9.1 relates to agricultural buildings. It states that the provision of well-located structures and facilities necessary for good and environmentally sound agricultural practice shall be supported by the Planning Authority. It states that the suitability of a given proposal will be determined by the following factors:

- The provision of buildings to a design, materials specification and appearance and at locations which would be compatible with the protection of rural amenities. Particular attention should be paid to developments therefore in sensitive landscapes as identified in the Landscape Character Assessment;

- The availability of an effective means of farm waste management to ensure nutrient balancing between application of farm wastes to land and its balanced uptake by agricultural use of land;
- Whilst the Planning Authority recognises the primacy in land use terms of agriculture in rural areas and that the presence of individual housing should not impinge unduly on legitimate and necessary rural activity, regard should also be had to the unnecessary location of major new farm complexes proximate to existing residential development.

5.1.2. Section 11.13.1 relates to development management standards for agricultural buildings. It states that the design, scale, siting and layout of agricultural buildings should respect, and where possible, enhance the rural environment. In visually sensitive areas, the Council will seek to group together and site buildings in an appropriate manner, and require the use of harmonious external materials to minimise obtrusion on the landscape. The use of dark coloured cladding, notably dark browns, greys, greens and reds are most suitable for farm buildings, and roof areas should be darker than walls. It also states that developments shall comply with the Good Agricultural Practices Regulations.

5.1.3. Policy RD POL 12 is to facilitate the development of agriculture while ensuring that natural waters, wildlife habitats and conservation area are protected from pollution.

5.1.4. The appeal site is located within the South West Kells Lowlands, an area of Moderate Landscape Sensitivity and Moderate Landscape Character Value.

5.2. **Natural Heritage Designations**

5.2.1. The appeal site is not located within or in immediate proximity of any sites with a natural heritage designation. The closest such sites, and their distance from the appeal site are as follows:

- Girley Bog NHA (Site Code 001580): c. 1.3km to the south.
- Girley (Drewstown) Bog SAC (Site Code 002203): c. 2.1km to the south.
- River Boyne and River Blackwater SAC (Site Code 002299): c. 3.3km to the south west and c. 6km to the north east.

- River Boyne and River Blackwater SPA (Site Code 004232): c. 6km to the north east.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal was lodged by FD Breitenstein's Studio d'Architecte on behalf of Mr Noel Cooney. The issue raised in the appeal can be summarised as follows:

- Appellant's family home and 12 ha farm is adjacent to appeal site.
- In 2008, while appellant had left his house to facilitate construction work, the applicant erected a shed less than 40m from the appellant's home. Enforcement files opened in 2008 and 2010 (UD 08227 and ED10350).
- Retention permission for the shed and underground slurry tank was granted under KA120304, which the appellant agreed not to appeal. This was on foot of a covenant guaranteeing regular water quality checks, 100m distance between silage bale storage and dwelling house, advance warning of open air slurry agitation events, an undertaking that he would not seek to expand the cattle storage facility and that in breach of that agreement he would consent to a court order to cease cattle storage activities in the shed. Except for water testing, all agreed measures were ignored after a year.
- In November 2017, setting aside the covenant, the applicant lodged an application for a new shed and slurry tank on its own separate but adjoining site and similar in design and use to that granted retention permission.
- Appellant notes that an additional open cattle pen has been built since the covenant was signed and is located 40m from his home.
- Appellants experience air, noise and odour pollution from livestock, machinery and slurry agitation all year around.
- 100m distance would be suitable if sound attenuation and ventilation were part of the shed design.

- Proposed development will put an end to outside family activities, barbecue etc.
- Activities outside shed are as noisy as those within it.
- Application would lead to two cattle sheds with capacity of 250 head of livestock. It would amount to having a permanent cattle market within 40m of appellant's home.
- Appellant notes how small the site is for the livestock numbers.
- Intended cattle business is not a general agricultural activity with seasonal events, but is a specialised and intense form of farming.
- Absence of clarity with regard to impact of proposed development on covenant.
- Appellant accepts that residential use should not impinge on agricultural use, but this activity is different from conventional farming.
- The Board is asked to consider:
 - That the shed be a replacement for the existing shed, which would then be decommissioned.
 - That the shed be relocated at least 150m from appellant's house.
 - That no cattle, structures or activities be ever allowed along his boundary between the existing shed and the new shed.
 - That sound attenuation measures and materials be used and electric machinery be required.

6.1.2. A copy of the abovementioned covenant was submitted with the appeal.

6.2. Applicant Response

6.2.1. A response to the appeal was submitted on behalf of the applicant by Mr Michael Hetheron. The issues raised can be summarised as follows:

- No independent surveys or data are submitted to support appellant's assertions regarding air and noise pollution.

- Contention that cattle are kept in the existing shed all year around is not correct. Cattle are reared on the land from April to October and not housed in the existing shed.
- Noise and smells from existing yard are not related to this application, and the proposed shed is over 100m from the appellants home.
- Appellant has built a shed c. 27.8m from the applicant's home.
- Appellant is a part-time farmer and is entitled to undertake agricultural activities on his own land.
- Proposed shed includes ventilation but not sound attenuation. Storage area for hay and straw has been included along the western elevation to reduce noise and odour.
- Proposed development will not prevent appellant from enjoying outdoor life due to distance relative to existing sheds.
- The existing shed is of no consequence to the Board's consideration as it is on a separate site.
- Appellant's claim that combined livestock numbers would be 250 cattle is not correct. With regard to section 2.7 of DAFF Specification S123, the shed could only accommodate 50 cows and 50 small calves depending on calving times.
- Under Nitrates regulations, the applicant is limited in the number of cattle he can hold.
- Shed is designed in accordance with DAFF specifications. Livestock are housed in the winter months, and for seven months of the year the shed will be virtually empty of livestock.
- Use of proposed shed is clear. It is a bovine shed to accommodate suckler cows and calves over the winter period.
- Applicant has not breached the covenant. He has not increased the intensification of the shed granted under Reg. Ref. KA120304.
- There is no new farming activity proposed. Wintering facilities for cows and calves is a conventional agricultural use.

- Appellant mentions noise from applicant's machinery, but stated that his sheds are used for machinery storage and does not seem to have any issue with the noise from that.
- The countryside is a factory floor for food production, not a private parkland for persons who live in it. Farming has to evolve to meet environmental requirements, such as the indoor wintering of cattle and storage of effluent over the winter period.
- Photographs of numerous similar structures in the immediate vicinity are provided.
- The Board should not make any judgement regarding the covenant.
- The Board should consider the location of the appellant's own sheds and their proximity to the boundary.
- The Board is asked to reject the appellant's suggestion regarding sound attenuation measures as these are not required under DAFF specifications and shed is 100m from applicant's dwelling.

6.3. Planning Authority Response

6.3.1. The Planning Authority's response to the appeal can be summarised as follows:

- Proposed development is consistent with Development Plan policies and objectives.
- Shed is 100m from appellant's dwelling and 139m from applicant's dwelling. These separation distances are considered appropriate and sufficient to address noise and air pollution concerns.
- The lands are in agricultural use and will remain in agricultural use.
- Increase in stocking rate is marginal. Having regard to the established agricultural activity on site, the adjacent farmyard and the extent of the applicant's landholding, it is not considered that the proposed development would represent an intensification of use.
- The proposed use falls within the definition of agriculture as set out in the Planning and Development Act 2000-2017.

- The applicant provided sufficient information to allow the Planning Authority to make its decision.

6.3.2. A report from the Environment Section was also submitted, stating that they have no objections subject to conditions.

6.4. **Observations**

6.4.1. None.

6.5. **Further Responses**

6.5.1. None.

7.0 **Assessment**

7.1. I consider the key issues in determining this appeal are as follows:

- Principle of proposed development.
- Residential amenity.
- Visual amenity.
- Effluent Management.
- Other issues.
- Appropriate Assessment.

7.2. **Principle of Proposed Development**

7.2.1. The appellant contends that there is an absence of clarity with regard to the proposed development, that the new farming activity is different from conventional general agricultural uses and that an intensification to 250 cattle would amount to having a permanent cattle market adjacent to his home. The applicant contends that the number of cattle to be housed will be significantly less than this in accordance with DAFF specifications and the Nitrates Regulations, and that the shed will be used to house cattle in the winter months only.

- 7.2.2. The appeal site is located within an unzoned rural area of County Meath where agriculture is the main economic activity undertaken. It is first and foremost a working agricultural area rather than a residential area, and both the applicant and the appellant are stated as being involved in agricultural activities. The applicant's existing agricultural operation includes the rearing of cattle, and the proposed development also relates to the rearing and housing of cattle. The existing and proposed activities at the appeal site therefore relate to the breeding and keeping of livestock which falls within the definition of 'agriculture' set out in the Planning and Development Act 2000, as amended.
- 7.2.3. Policy RD POL 12 of the Development Plan is to facilitate the development of agriculture, while ensuring that natural waters, wildlife habitats and conservation area are protected from pollution, and I therefore consider the proposed development to be acceptable in principle, subject to consideration of the planning issues set out in Section 7.1 above.

7.3. Residential Amenity

- 7.3.1. At the outset, it is clear from the appeal, the planning and enforcement history on the applicant's landholding, and the existence of a covenant, that the location and operation of the existing cattle shed to the north of the appeal site is a source of contention between the parties. The existing shed is not, however, within the appeal site and any issues with regard to odour or noise arising from that structure are not matters for assessment in this case, except insofar as the proposed development could materially exacerbate existing impacts or where a cumulative impact could arise. Any issues with regard to compliance with the covenant or the planning status of structures outside of the appeal site are not matters for determination by the Board.
- 7.3.2. While the appeal site boundary is immediately to the east of the appellant's property, the separation distance between the proposed slatted shed and the appellant's house will be 100m. The shed will also be separated from the applicant's house by c. 140m. Having regard to the nature of the proposed development, which comprises the housing of animals, the storage of slurry and the operation of machinery, I consider that any potential impact on the appellant's residential amenity would primarily be as a result of odour, noise and traffic.

- 7.3.3. With regard to odour, I consider that the main source of odour emissions is likely to be the slurry tank under the slatted shed, particularly when it is being agitated or drained. In this regard I note that agitating points are located on both the northern and southern sides of the shed.
- 7.3.4. While the perception of odour is somewhat subjective and subject to individual sensitivity, I consider that the odour generated by the proposed development will be typical of such agricultural developments and would not be out of place in this strongly rural area, where there are many examples of similar slatted sheds. Having regard to this, the intended use of the shed as a wintering facility for a limited period of the year, and the fact that the shed will be located at a distance of c. 100m from the appellant's property, I therefore consider that the development would not give rise to a sufficient level of odour as to warrant refusal of planning permission on these grounds. With regard to the potential for a cumulative odour impact with the existing cattle shed, I note that the two sheds will be separated by c. 100m, and I therefore do not consider that the proposed development would result in any significant additional odour impact above that which may already exist.
- 7.3.5. Due to the proximity of the appeal site to the appellant's property, the issues of noise and traffic also need to be considered. The primary source of both is likely to be tractor, tanker and associated machinery movements. Having regard to the limited scale of the development, its agricultural nature, the existing agricultural activities underway in the area and noting that there appears to be a low level of traffic on both the local road and the access laneway, I do not consider that noise or traffic generation would have a significant impact on residential amenity. The appellant has requested that sound attenuation measures be required, however I do not consider that this is necessary in this case for the reasons outlined above.
- 7.3.6. In conclusion, I consider that the proposed development would not seriously injure the residential amenities of the appellant or other properties in the vicinity.

7.4. Visual Amenity

- 7.4.1. The proposed slatted shed has an eaves height of 4.35m and a ridge height of 8.12m. While it has a gross floor area of 715 sq m, it will not be readily apparent from the public road due to its c. 175m set back and its location on a level site to the rear

of the existing cattle shed and the applicant's house. It will also benefit from a significant degree of screening from the roadway and the appellant's lands to the west due to the presence of a dense and mature hedgerow along the western site boundary which will limit visibility of the site from areas to the west and north.

- 7.4.2. I would also note that slatted sheds are common agricultural structures, of which there are already a number in the surrounding area, and the proposal is of a standard agricultural design, with a mix of concrete and green metal cladding for walls and roof. While the structure will be visible from some surrounding areas, I do not consider that the placement of such a structure and its associated activity in a strongly agricultural area such as the appeal site would be seriously injurious to the visual amenities or established character of the area. With regard to the appellant's dwelling, the proposed slatted shed would be located c. 100m to the south east of the dwelling. This will be the closest residential property. As a result of the site topography, the existing boundary planting and the separation distance, I am satisfied that the proposed development will not have a significant adverse visual impact on the appellant's dwelling.

7.5. Effluent Management

- 7.5.1. The slatted shed includes an underground slurry storage tank with a stated volume of 310 cubic metres. The applicant has not provided calculations to demonstrate that the capacity of the tank is sufficient for the stated number of animals, however I note that the management of effluent arising from agricultural activity is governed by specific legislation set out in the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014, as amended. The applicant will also be required to construct the structures in accordance with the relevant Department of Agriculture, Food and the Marine (DAFM) specifications. Subject to compliance with these Regulations and DAFM specifications and the imposition of suitable conditions in this regard, I am satisfied that the proposed slatted shed and its storage tank will not result in water pollution or a deterioration in water quality.
- 7.5.2. The information submitted by the applicant with the planning application indicates that the lands available to him for landspreading extend to 31.86 ha, and that the nutrient loadings arising would be compliant with Nitrates Directive requirements. It is not the function of the planning system to replicate controls that exist under separate

systems, and as noted above, the applicant will be required to undertake landspreading in strict compliance with the detailed provisions of the Good Agricultural Practice for the Protection of Waters Regulations 2014, as amended. Subject to such compliance, I do not consider that the landspreading of effluent would result in a significant negative impact on water quality.

7.6. Other Issues

7.6.1. The Meath County Development Contribution Scheme 2016-2021 states that roofed structures for the housing of cattle and structures for the storage of slurry and yard water are exempted from the requirement to pay development contributions. Should the Board be minded to grant permission, I therefore recommend that no development contribution condition be included.

7.7. Appropriate Assessment

7.7.1. The application did not include an Appropriate Assessment Screening Report. The Planning Authority carried out an AA Screening exercise and concluded that the proposed development would not be likely to have a significant effect on European sites and that a Stage 2 AA was not required.

7.7.2. The appeal site is not located within or in immediate proximity to any Natura 2000 sites. The closest such sites, their distance from the appeal site, and their qualifying interests are as follows:

- Girley (Drewstown) Bog SAC (Site Code 002203): c. 2.1km to the south.
 - Degraded raised bogs still capable of natural regeneration
- River Boyne and River Blackwater SAC (Site Code 002299): c. 3.3km to the south west and c. 6km to the north east.
 - Alkaline fens [7230]
 - Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
 - *Lampetra fluviatilis* (River Lamprey) [1099]
 - *Salmo salar* (Salmon) [1106]

- Lutra lutra (Otter) [1355]
- River Boyne and River Blackwater SPA (Site Code 004232): c. 6km to the north east.
- Kingfisher (Alcedo atthis) [A229]

7.7.3. The conservation objectives for the SACs and SPA are to maintain or restore the favourable conservation condition of the habitats and/or species for which the SACs and SPA were selected.

7.7.4. While the proposed development clearly gives rise to a potential source of contamination, namely slurry and soiled surface water run-off, there are no watercourses in the immediate vicinity of the site. In my opinion, therefore, any potential pathway to the receptors listed above would therefore be by way of contamination of groundwater due to a leaking storage tank, or run-off during landspreading of slurry.

7.7.5. Having regard to the nature of the proposed development, the design of which incorporates appropriate arrangements for effluent storage in accordance with the detailed DAFF specifications and the operation of which will be required to be compliant with the European Communities (Good Agriculture Practice for Protection of Waters) Regulations, 2014, as amended, I consider it 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 any European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

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

9.0 Reasons and Considerations

9.1. Having regard to the rural location of the proposed development and the Objectives of the Meath County Development Plan 2013-2019 which seek to promote

agricultural development it is considered, subject to conditions set out below, that the proposed development would not have an adverse visual impact, would not seriously injure the amenities of the area by way of odour or noise nuisance, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would therefore be in accordance with 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, 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. The slatted shed shall be used only in strict accordance with a management schedule to 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:

(a) Details of the number and types of animals to be housed.

(b) The arrangements for the collection, storage and disposal of slurry.

(c) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

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

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. A minimum of 18 weeks' storage shall be provided in the underground slurry storage tank. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.

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

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, as amended.

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

Niall Haverty
Planning Inspector

16th May 2018

