



An
Bord
Pleanála

Inspector's Report ABP-300939-18

Development	Construction of an extension to house a milking parlour.
Location	Weatherstown, Glenmore, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	17613
Applicant(s)	Bill Fitzgerald
Type of Application	Permission
Planning Authority Decision	Grant Permission subject to Conditions
Type of Appeal	Third Party
Appellant(s)	Patrick Hartley.
Observer(s)	None
Date of Site Inspection	24th July, 2018
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area approximately 7km to the south west of New Ross. The site comprises a farm yard complex on a dairy farm and is located such that the existing dairy building is located close to the eastern boundary of the site. Other agricultural buildings in the same ownership are located to the south west and north west of the dairy building and comprise mixed use agricultural buildings, effluent storage tanks and a dwelling.
- 1.2. To the north east of the appeal site is located a dwelling which is part of an agricultural holding that is in separate ownership.
- 1.3. From the application details, the stated area of the appeal site is 1.03 ha. The stated floor area of existing buildings on the site is 1265 sq. metres and the gross floor area of the proposed works is stated to be 206.6 sq. metres.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of an extension to the existing milking parlour building. The extension proposed is to be located at the northern end of the existing building and is proposed to comprise new milking equipment including the replacement of the existing compressor.
- 2.2. The floor area of the proposed extension to the dairy is stated to be 206.6 sq. metres and the proposed new dairy would be roofed with roofing material and profile to match in with the existing agricultural building. The layout proposed would result in the holding area for cattle being roofed and the improvement of the environment in the vicinity of the dairy building. This holding area is proposed to be located between the proposed new dairy and the existing agricultural building and in the area of the existing dairy.
- 2.3. It is noted that the first and third parties to this case have been in dispute regarding the impact of the existing farm activity on the third parties lands and that the dispute has resulted in a circuit court settlement that dates from 2013. As part of this agreed

settlement, the first party agreed to the transfer to the third party of a strip of land to the north east of the proposed location of the new dairy and to the construction of a new two metre high wall along the realigned boundary.

3.0 Planning Authority Decision

3.1. Decision

A Notification of Decision to Grant Permission subject to 10 no. conditions was issued by the Planning Authority. The most notable conditions are considered to be as follows:

Condition No.3 requires that development authorised shall not commence until such time as the 2 metre high plastered block wall referred to in the response to FI and the circuit court terms of settlement is fully completed.

Condition No.4 requires that the final commissioning of the new milking parlour and dairy shall include for the relocation of the exhaust box and compressor as proposed in the response to FI submitted to the Planning Authority.

Condition No.5 requires that clean storm water shall be managed within the curtilage of the landholding via suitably designed soakaways.

Condition No.7 requires that the development shall be undertaken in accordance with the provisions of the EC (Good Agricultural Practice for Protection of Waters) Regulations, 2014. The design shall be undertaken to minimise the production of soiled water and storage facilities to prevent the run off or seepage therefrom.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial planning officer report notes the concerns of the environment section with regard to the proximity of the proposed development to the boundary and the potential for noise issues. Further information is recommended. Subsequent to the

submission of a response to further information, a second report recommends a grant of permission that is consistent with the Notification of Decision which issued.

3.2.2. Other Technical Reports

Environment Section – Initial report notes the location of the proposed development that it is proposed to extend development towards an open boundary with a residential property and expresses concerns with regard to the potential noise impacts. Report subsequent to the submission of further information states that there is no objection to the proposed development.

3.3. **Third Party Observations**

Observation from adjoining property owner (now third party appellant) objecting to the proposed development on the basis of the level of noise generated by the milking parlour and that noise has been an issue at the site for years.

4.0 **Planning History**

The following planning history is referenced on the appeal file:

Kilkenny County Council Ref. 16/806 – permission granted by the planning authority for the construction of two separate agricultural buildings and associated concrete aprons.

Kilkenny County Council Ref. 07/267 - An Bord Pleanala Ref. PL10.223264 – Permission granted by the Planning Authority and decision upheld on appeal by the Board for the conversion of a loose shed to a milking parlour, conversion of existing feed passage to a loose shed, installation of an easyfeed system, overground slurry storage tank and all ancillary works.

5.0 Policy Context

5.1. Development Plan

The site is located in a rural area outside of any settlement.

Section 6.2.4 of the *Kilkenny County Development Plan, 2014-2020* relates to agricultural development and requires, inter alia, that developments would be sited so as to be as visually unobtrusive as possible and the minimisation of the threat to surface and ground waters.

5.2. Natural Heritage Designations

The site is not located in close proximity to any Natura 2000 sites. The closest site to the appeal site is the River Barrow and River Suir SAC site which is located c.2km to the south of the appeal site at the closest point.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the third party appeal:

- That the objection is based on the proximity of the proposed extension / existing milking parlour to the appellants dwelling.
- That in 2007 An Bord Pleanála granted permission for the conversion of an existing shed to a milking parlour, an overground slurry tank and associated works. This development did not proceed. This permission was granted despite the reservations of the inspector who noted the proximity of the development to the adjoining dwelling. At that time the separation distance was 37 metres. Now the separation proposed is 17 metres.
- That the applicant was not requested to submit information regarding existing or likely future noise emissions from the site.

- In the case of the previous application the Board inspector noted that the noise from the shed was loud and clearly audible from the bedroom of the adjoining dwelling. This will be worse now with the separation distance down to 17 metres.
- That no details are provided in the current application of where cattle will congregate and where they will enter and exit the milking parlour. This would have a significant bearing on the impact on residential amenity.
- The previous inspectors report stated that cattle should not congregate in the area to the east of the shed.
- That the proposed collection yard indicated is not sufficiently large to cater for the cattle that will use the facility and an increase in this yard will likely come closer to the appellants dwelling.
- If a yard is proposed to the east of the shed then a significant lowering of ground levels will be required and a retaining wall constructed. Such a yard could be used for any purpose and is not acceptable on the basis of its impact on residential amenity.
- That the previous inspectors report noted the presence of a significant amount of sludge to the south and south east of the shed and that the proper treatment of this effluent needs to be addressed.
- Overall the location of the proposed milking parlour is unacceptable and the applicant has the potential to locate it to the south west.

6.2. Applicant Response

The following is a summary of the main issues raised in the first party response to the grounds of appeal:

- That the proposed development will result in a reduction in the daily milking times from 5-7 hours per day down to 3-4 hours.

- That the main noise emitting elements of a milking parlour are the compressor and the exhaust box. These are currently located on the north west gable of the building close to the appellant's property. It is proposed to locate the exhaust box on the south east gable, 18 metres further away from the appellants dwelling, and to locate the new compressor 5 metres further away than existing.
- That the vacuum pump will be replaced with a variable speed pump that is 40-60% quieter than the existing. The new milking machine will be less noisy than the existing.
- That a wall is to be built between the milking parlour and the neighbouring dwelling that will reduce noise levels.
- That cattle in the collection yard will not change but the cattle will be in it for less time.
- That it is not possible to reduce the scale or location of the proposed dairy due to the existing configuration of the farm complex.
- That as part of the circuit court settlement reached between the first and third parties in April 2013 it was agreed that the first party would construct a block wall as a boundary along the lands transferred to Mr Hartley (third party) with a plaster finish and a minimum height of 2 metres. This wall is indicated on the site plan submitted with the application.
- Details of the circuit court settlement, details of slurry storage requirements for the site (Teagasc), and noise levels and specifications for the proposed vacuum pumps submitted with the appeal response.

6.3. Planning Authority Response

Submission stating that the Planning Authority has no further comment to make on the grounds of appeal.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of development,
- Noise and residential amenity issues,
- Pollution and other issues.
- Appropriate assessment.

7.2. Principle of Development

7.2.1. With regard to the principle of the proposed development, the site is located on an agricultural holding located in a rural area. The site of the proposed new dairy is located in an existing farmyard complex. In principle therefore there is no objection to the proposed use and the construction of a new dairy on the site.

7.3. Noise and Impact on Residential Amenity

7.3.1. The proposed new dairy is to be located to the north east of the existing mixed use shed on the site and would be located closer to the existing dwelling to the north east of the site than is the case in the current layout. This proximity and the resulting noise impacts, are the basis for the third party appeal submitted and it is noted that the Planning Authority had some concerns that resulted in a request for further information.

7.3.2. The request for further information included a request that the layout of the overall farmyard complex be examined to determine if it was feasible that the proposed new dairy could be sited further away from the third party property to the north east. The only alternative location would appear to be at the opposite (south western) end of the agricultural shed identified as No.4 on the submitted Site Layout Plan. The first party states that no viable alternative location is available due to the existing configuration of the complex. From an inspection of the site and the plans it would appear that this is the case due to the restricted room available at the other end of the shed identified as No.4 and the circulation of animals in and out of the building.

As referenced by the third party appellant, I note the fact that permission was previously granted by the Board (ABP Ref. PL10.223264) for the conversion of part of the existing shed (No.4 on the submitted Site Layout Plan) for use as a milking parlour and it is not clear from the information submitted why the development of a new dairy within this shed at a location further removed from the appellants property is not feasible.

- 7.3.3. In the absence of a clear justification as to why an alternative location for the new milking parlour is not available it is proposed to proceed on the basis of an assessment of the proposed location. The third party appellants note the fact that the existing parlour results in significant noise disturbance to their property and that this will be made worse by the location of the dairy closer to their property as proposed. In response, the applicant has detailed how the equipment in the proposed development would result firstly, in a significantly reduced running time per day and also a reduction in noise generation. In addition, it is noted that the design and block construction of the proposed extension to accommodate the dairy is such that it would have better noise insulation and that the 2 metre high wall required by court agreement to be constructed at the site boundary would act as a noise barrier.
- 7.3.4. On the basis of the information submitted it would appear that the efficiency of the operation would be improved with the new equipment such that the milking time would be reduced from the existing 5-7 hours to 3-4 hours. This is obviously a significant improvement in terms of noise and the impact on amenity. With regard to noise generation from the milking activity, the first party has set out how the proposed pumping equipment to be fitted would generate less noise. Specifically it is stated that the new pump would be 40-60% quieter than the existing unit though while a specification for the new pump is submitted there are no noise measurements available regarding the existing equipment. The first party also sets out how the main noise emissions from the dairy building would be the exhaust box and the compressor. The proposed design would result in the compressor being relocated to a position approximately 5 metres further from the appellants property along the north west facing elevation and in a position where the new structure would block it from the appellants dwelling. Similarly, the proposed design would result in the exhaust box being relocated from the north west elevation to a position

on the south east facing elevation where it would be c.18 metres further away from the appellants dwelling.

7.3.5. The third party appellant states that the application should have been accompanied by a noise assessment that details the existing and proposed layout noise generation at noise sensitive locations, notably the appellants dwelling. I would agree that such an assessment would be beneficial in making an overall assessment of the likely impact on residential amenity and that in the absence of such an assessment the noise impact of the proposed development is somewhat uncertain. I note the case made by the third party regarding the potential impact of the location of the dairy closer to his dwelling and in a position c.17 metres from his dwelling. Against this, the submitted information indicates that it is likely that the period of noise would be significantly reduced and that noise generation reduced by new equipment and revised locations for exhaust and compressor outlets. Noise would also be mitigated by the solid structure and location of the dairy building relative to the noise generating source as well as by the proposed boundary wall to be constructed. It is therefore likely that the noise impact relative to the existing situation would be reduced.

7.3.6. However, there remains in my opinion significant uncertainty with regard to the impact of the proposed development on residential amenity. The location of the proposed dairy building within 17 metres of the appellants dwelling is very close for a development of this form and while equipment noise may be reduced the noise source is being moved closer to the dwelling. While an improvement on the existing situation is likely, this existing noise environment is poor. The issue of noise and potential alternative layout was raised by the Planning Authority by way of further information and the response submitted was not in my opinion very comprehensive given the nature and significance of the issues raised. On balance therefore, having regard to the nature of the proposed development and its proximity to the appellants dwelling, to the uncertainty regarding the likely noise impact and level of noise reduction due to a lack of noise assessment and modelling as well as uncertainty regarding possible alternative layouts, it is considered that the proposed development has the potential to have a significant adverse impact on residential amenity by way of noise.

7.4. Pollution and Other Issues

- 7.4.1. The existing hardstanding area to the north east of the existing building is open. As part of the proposed development it is proposed that the holding areas identified as Nos.1 and 3 on the Site Layout Plan would be covered. This would have a likely significant positive impact in terms of pollution and control of run off from these areas.
- 7.4.2. I note that the third party has raised concerns with regard to the adequacy of the proposed cattle collection area and the potential that this area would be extended such that it would come closer to his dwelling. In such circumstances there is also concern expressed that this would necessitate the construction of retaining walls as without such walls the levels in this part of the site would not facilitate the extension of the yard into the area close to the appellant's property. I note that the first party states that there will not be additional cattle using the dairy and the implication is that the indicated collection area is adequately sized to cater for the development. I would also note that were the collection yard to be extended then this would likely require permission on the basis of being in such close proximity to the appellants dwelling and therefore not meeting the conditions and limitations on exempted development.

7.5. Appropriate Assessment

- 7.5.1. The site is located such that it is within c.2km of the River Barrow and River Nore SAC site. The nature of the proposed development is such that there is not proposed to be an intensification in the use of the dairy and there is no indication that the number of cattle would increase. The amount of slurry generated would not therefore likely increase and the first party appeal response includes a submission from the local Teagasc Advisor setting out how the total slurry storage on site at 1851 cubic metres exceeds the 1454 cubic metres required.
- 7.5.2. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. In view of the above and particularly the proximity of the proposed development to third party residential property, to the lack of clarity with regard to potential alternative layouts on site and the absence of any detailed assessment of existing and likely future noise generation, it is considered that to permit the proposed development would result in a likely significant adverse impact on residential amenity by virtue of noise. It is therefore recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. Having regard to the proximity of the proposed development to third party residential property, to the lack of clarity with regard to potential alternative layouts on site and the absence of any detailed assessment of existing and likely future noise generation, it is considered that notwithstanding the use of more modern equipment, to permit the proposed development would result in a likely significant adverse impact on residential amenity by virtue of noise and general disturbance. The proposed development would therefore seriously injure the residential amenity of adjacent property and would be contrary to the proper planning and sustainable development of the area. .

Stephen Kay
Planning Inspector

29th August, 2018