



An
Bord
Pleanála

Inspector's Report ABP-301040-18.

Development

Retention of former milking parlour and its use as a shed for housing cattle, erection of a slatted extension to existing cattle sheds for feeding cattle, installation of a second slatted tank, installation of effluent holding tank associated with existing dung stead and all associated site works.

Location

Desart, Cuffesgrange, Co. Kilkenny.

Planning Authority

Kilkenny County Council.

Planning Authority Reg. Ref.

17/789.

Applicant(s)

Enda Murphy.

Type of Application

Retention and Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party

Appellant(s)

Paul and Kathleen Kennedy.

Observer(s)

None.

Date of Site Inspection

30th May 2018.

Inspector

Susan McHugh.

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area west of the N76 between the town of Callan to the south and Kilkenny city to the north. It is located to the north of the R691 and on the former estate of Desart Demesne approx. 3kms south west of Cuffesgrange. The area is characterised by farmland, mostly pasture, served by a network of third class roads.
- 1.2. The appeal site, with an area of 0.51ha, is a small farm complex, including a slatted shed and former milking parlour, and an abandoned two storey farmhouse. It is located on the northern side of the L5035-24 with access from same.
- 1.3. Immediately to the south west of the site (not part of the site) on the opposite side of the public road is a converted two storey coach house, home to the appellants, with another dwelling located immediately to the south. The former coach house is included in the National Inventory of Architectural Heritage (NIAH) as a building of architectural interest. It is located approx. 29m from the existing sheds on the appeal site.
- 1.4. I had an accompanied site visit with the applicant to see the layout and contents of the sheds. The former milking parlour is located to the western gable of the sheds. The existing sheds comprise two slatted tanks one either side of the existing cattle houses and a newly constructed lean to over the southern slatted tank. The control box which operates the scrapper on the floor of the sheds is mounted on the inside of the southern end of the shed.
- 1.5. The slatted tank at the northern end is open. The existing dung stead which is fenced off but open to the elements is located on the northern end of the shed. The site also contains a concrete yard area which appeared relatively clean.
- 1.6. On the day of site inspection, in late May, there were no farm animals being housed in the shed, as they had been put outdoors to graze. The cattle were visible grazing on the surrounding agricultural lands.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of the former milking parlour and its use as a shed for housing cattle. This has a stated floor area of 83sqm.

2.2. Permission is also sought for the following;

- erection of a slatted extension on the southern end of the existing cattle shed used for feeding cattle with a stated area of 208sqm,
- installation of a second slatted tank with a capacity of 153 sqm,
- installation of effluent holding tank associated with existing dung stead with a capacity of 35.7 sqm, and
- all associated site works.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to **grant** retention permission and permission subject to 5 no. conditions. These are summarised as follows:

Condition no. 1 – The development shall be retained strictly in accordance with the documents lodged and the conditions of this permission.

Condition no. 2 – Disposal of surface water.

Condition no. 3 – Disposal of waste.

Condition no. 4 – Requirements of the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2014.

Condition no. 5 – External finishes.

Section 34 (13) of the Planning and Development Acts 2000-2017 is included as a footnote and in the context of the need to avoid infringement of third party rights, this provides: 'A person shall not be entitled solely by reason of permission under this section to carry out any development'.

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 28/11/2018)

Basis for the planning authority decision. Includes:

- Notes from the GIS mapping system that the Kennedy's house and the subject site once formed part of a complex of structures associated with Desart Court, Lord Cuffe's County House Estate.
- The Kennedys coach house which dates to c.1825 is listed on the NIAH as Ref 12402210, and was extensively renovated and converted to residential use around 2000.
- There is no planning history on the Kennedys site and that the house was converted to residential use without the benefit of planning permission.
- The Environment Section assessed the results of the noise monitoring report which was submitted as part of the submission from a third party and have no objection to the development.
- Having regard to the association of the development with an existing farmyard and farm landholding, development for retention is acceptable at this brownfield agricultural site, would not seriously injure the amenities of the area and would accord with the provisions of the County Development Plan.

3.2.2. **Other Technical Reports**

Environment Section – No objection.

3.3. **Prescribed Bodies**

None on file.

3.4. **Third Party Observations**

One submission was lodged by Bluett and O'Donoghue Architects on behalf of Paul and Kathleen Kennedy (the appellants) with an address opposite the appeal site. This was accompanied by a noise monitoring report. Issues raised are similar to those raised in the grounds of appeal.

4.0 **Planning History**

None on file.

Enforcement

ENF 17-029: Reference in appeal to enforcement history, but no details available on the Councils website.

5.0 Policy Context

5.1. Kilkenny County Development Plan 2014-2020

The site is in open countryside without a specific designation in the Kilkenny County Development Plan 2014-2020.

Chapter 6 refers to Rural Development and **Section 6.2.4** sets out policy for agricultural developments.

Chapter 8 refers to Heritage and **Section 8.3.5.2** to the National Inventory of Architectural Heritage (NIAH), and states that it is an objective to include structures that have been identified in the NIAH of national, local or regional importance for listing. The NIAH describes the house as follows:

NIAH Ref. 12402210 listed as a 'Detached six bay two storey coach house with attic, circa 1825, with four-bay single-storey lean-to projecting lower range to left. Extensively renovated to accommodate residential use'.

Chapter 9 refers to Infrastructure and Environment and **Section 9.2.2.1** refers to Noise Control and stated that *'Excessive noise and dust levels can have an adverse impact on the county's environment. The Council will seek to minimise noise through the planning process by ensuring that the design of future developments incorporate measures to prevent or mitigate the transmission of noise and vibration, where appropriate'.*

5.2. Natural Heritage Designations

There are no designated areas in the vicinity, the following European sites are within a 15km radius of the appeal site.

Site Name	Designation	Site Code	Distance
River Barrow and River Nore	SAC	002162	4.5km W
River Nore	SPA	004233	5.3km S

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal against the decision to grant permission by the planning authority has been lodged by Bluett and O'Donoghue Architects on behalf of the appellants Paul and Kathleen Kennedy. The appeal was accompanied by the original submission to the planning authority, a Noise report prepared by CLV Consulting and a personal statement from the appellant. In summary, it states:

1. *Failure of the planning authority to properly consider and investigate the negative impact of the development on the Kennedys due to its close proximity.*

- The development is located 26m from the Kennedys dwelling house, and is not exempt under Part 6 of the 2001 to 2017 Planning and Development Regulations, as the house is located within 100m of the farm structures and no consent was given by the appellant.
- The planning authority's assessment which references the exemptions concludes that they do 'not result in a requirement at planning stage for these separation distances to be adhered to' is flawed and prejudicial to the Kennedys.
- The proposed development involved an intensified housing of livestock and installation of new slurry tanks. Surprised given the detailed objection lodged by the Kennedys that no further information was sought by the planning authority, particularly given the origin of this application on foot of a complaint and subsequent warning letter.
- The planning authority could have conditioned for example acoustic dampers, suppressors for foul odours, restricted times of the day for certain activities etc.

- The actions of the planning authority which creates a 'loophole' could set a dangerous precedent.

2. *Unsatisfactory assessment and decision on the application by the planning authority.*

- In support of the Kennedys objection to the commercial activities occurring within the development they commissioned a technical sound report which concluded that there was significant noise impact on the Kennedy's dwelling house from the development.
- Refer to EPA G4 guidance document which relates to guidance for developments requiring to be licenced. Argues that the G4 guidance document which notes that specialist advice will be required where there is a requirement to reduce noise, and that the planning authority in receipt of a noise report which concludes that there is a serious noise issue arising from the development did not seek to deal with the findings of the noise report by either obtaining expert advice or applying any conditions to deal with noise levels.
- The area planner appears to opt out of assessment of these issues by reference to the Environment Section Report which indicates no objection to the development.
- The Environment Section report is silent on both noise and foul odours issues, which is unsatisfactory and contrary to Section 9.2.1 of the Kilkenny County Development Plan 'Noise Control'.

3. *Negative impact on the amenity of the Kennedy residence due to noise and foul odours.*

- The intensification of farm activities and the change of use which has occurred has resulted in severe loss of residential amenity and depreciation of the value of their property. The personal statement attached describes the profound impact which the applicant's actions have had upon their lives.

Conclusion

- The onus is on the applicant for a grant of permission to exhibit that they comply with the Law and that their proposal does not adversely impact on the

private property rights of adjoining landowners unless such impact is regulated and permitted. This onus is greatly heightened in applications for retention.

6.2. Applicant Response

A response was lodged by Peter Thomson on behalf of the applicant. In summary, it states:

The subject property

- The farmhouse was previously occupied by the applicant's late grandfather, and the applicant has been running the farm on his own since the recent death of his father Kieran. The applicant is now considering upgrading the existing farmhouse which is not derelict, and re occupying it as a family residence.
- Original existing farm buildings were constructed in the 1950's and have always been used to house cattle. The dung stead was constructed in 1976/7 and the milking parlour was added around the same time.

Recent developments

- In 2015 Kieran Murphy was directed by the Department of Agriculture to carry out various improvements to the farm buildings.
- In 2016 the Environment Section of Kilkenny County Council became involved and sought improvements to the farm which if not carried out would result in enforcement proceedings under environmental legislation.
- Certain improvements were carried out although Kieran Murphy was not aware that the works required planning permission. The works included the excavation of two slatted tanks, one on either side of the existing cattle houses, erection of a lean to canopy over the southern slatted tank and installation of an effluent tank to contain run off from an existing dung stead.
- Subsequent enforcement correspondence from the planning section referred to intensification of use of the existing farm buildings. In response the applicant confirmed that there had been no material intensification of use as a

result of improvements carried out, as the lean-to canopy did not increase the housing capacity of the buildings.

The appellants property

- The appellants reside in a former coach house which was converted to a dwelling around 2000 without the benefit of planning permission.
- The planners report notes that the milking parlour structure and dung shed were already in existence on the site and being used to house farm animals at that time.

Proposed Development

- The number of cattle housed in the buildings has fluctuated over the years but not to any noticeable degree. The type of cattle housed will also have varied, most recently a greater number of yearling bulls and heifers have been housed which, it is accepted, can make more noise than more mature cattle, but maintain that similar numbers of yearling bulls and heifers have been housed in the past.
- The scrapper associated with the slatted tanks is an integral and necessary element of the upgrading.
- The canopy which has been erected over one of the new slatted tanks provides cover for cattle while being fed and does not provide additional space to house cattle.

Grounds of appeal 1(a)

- The appellants agent fails to acknowledge that the farm complex existed before his client's house ever existed, and that his client cannot be held responsible for the appellants poor choice to develop a house in such close proximity to an existing operational farm.
- Effluent has always existed in the farm buildings, all that has changed is the means of its storage and disposal.
- Difficult to envisage what further information the planning authority could have sought from the applicant as suggested by the appellants, and the type of restrictions suggested are not matters that can be readily enforced in an

existing operational farmyard. Offer to limit the times the scrapper is used, to date it has only operated during the day, and to relocate the control box to the opposite end of the building complex.

Grounds of appeal 1 (b)

- The erection of the former milking parlour and its later use for housing cattle would have been exempted development with the consent of any neighbours within 100m. Uncertain if such consent was obtained, hence its inclusion for retention as a precaution. There have been no complaints over the years.
- The planning authority have not set any undesirable precedent for agricultural developments, and notes another similar case in Jerpoint Church, County Kilkenny in 2010 which was granted by the Board P.A. Reg. Ref. P11/493 ABP Ref. PL24.239962.

Grounds of Appeal 2

- Disputes complaint in relation to commercial activity, as there is only an agricultural activity on site.
- The noise survey report carried out is based on ill-founded misunderstandings of the existing situation. The assumptions that the farm complex was converted from an unspecified use for the primary purpose of breeding animals and handling and managing slurry are incorrect.
- As there was no previous noise survey carried out from the appellant's property, the noise consultant cannot state that there has been a significant increase in noise levels.
- The appellants family have around 200 ewes and are kept closer to the appellants house than any of the farm activities on the applicant's farm.
- The conclusion that of the noise survey and recommendation that the applicant should either cease or move the farmyard operation elsewhere or adopt noise mitigation measures to reduce noise emissions, respectively submit that it is the appellants that should be addressing the issue.
- The appellants could increase the height of their boundary walls or fit glazing in the windows of their home which would improve sound insulation.

Grounds of Appeal 3

- Appellants have no case in claiming loss of residential amenity and depreciation of the value of their property due to the perceived impact of noise and odours as if the appellants unauthorised residential use reverted to the permitted and authorised use as a coach house there would be no adverse impacts on the residential amenity and therefore no claim for depreciation in value.

6.3. Planning Authority Response

No further comments.

6.4. Observations

None.

7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings;

- Planning Policy
- Planning History and Retention Issues
- Enforcement Issues
- Noise and Amenities of the Area
- Precedent Case
- Appropriate Assessment

7.2. Planning Policy

- 7.2.1. The appeal site is in a rural area without specific zoning designations or controls. In such areas there is a general presumption in favour of agricultural buildings subject to appropriate design and environmental considerations.
- 7.2.2. The complex of shed buildings appears to be long established on the site, and appears in the oldest Ordnance Survey plans for the area.
- 7.2.3. I would consider that in the context of development plan policy, the historic use of the site, and the nature of the local area the proposed development should be considered favourably, having regard to amenity and pollution issues.

7.3. Planning History and Retention Issues

- 7.3.1. Peter Thomson Planning Solutions has submitted that the farm enterprise has been in the family for 3 generations and refers to the direction to the applicant's father (now deceased) in 2015 by the Department of Agriculture to carry out various improvements to the farm buildings.
- 7.3.2. Part 3 of the Planning and Development Regulations 2001 provides for *Exempted Development Rural* and Class 6 refers to Agricultural Structures and the housing of cattle. The third party considers that the development which is located 26 metres from their dwelling house was not constructed in accordance with the Regulations. In this respect they are referring in particular to Class 6(6) which provides: *No such structure shall be situated and no effluent from such structure shall be stored, within 100m of any house (other than the house of the person providing the structure) save with the consent in writing of the owner and as may be appropriate, the occupier or person in charge thereof.*
- 7.3.3. In this case the applicant states that they were uncertain if consent had been given for the conversion of the milking parlour and hence included it for retention as a precaution. While this application does not come within exempted development regulations as per Class 3, Section 6 of the Planning and Development Act 2001, it is not considered that this is a reason for refusal as the application must be considered on its merits.

7.4. Enforcement Issues

- 7.4.1. There are concerns about various aspects of the unauthorised development that have taken place on the appeal site and these are detailed in the third party appeal.
- 7.4.2. There are also issues raised by the applicant in relation to the conversion of the coach house for residential use by the third party without the benefit of planning permission.
- 7.4.3. Having regard to these issues it is noted that the Board has no function in respect of enforcement issues. Such matters are more appropriately dealt with by the Planning Authority. Section 10.1 of the Development Management Guidelines 2007 is relevant in this regard i.e.: *Enforcement of planning control is the responsibility of the planning authority and this is the case, of course whether the planning decision, including conditions, was made by the planning authority or the Board.*

7.5. Noise and Amenities of the Area

- 7.5.1. The proposed development is located very close to two dwellings and in an area with 4 dwelling houses located within 400 metres. It is not ideal to have an intensive livestock facility so close to dwellings, but as the site appears to have been used for farm purposes for at least 2 centuries I would consider this to be a generally established use and appropriate for a rural area, and as such I would consider that subject to appropriate controls it would not have an unacceptable impact on local amenities.
- 7.5.2. The third party residents are concerned about noise and odours from the farm buildings particularly given the proximity of the farm buildings used for housing animals to their residential property. They independently commissioned a noise report prepared by CLV consulting (Brian Johnson, Acoustic specialist) which was submitted to the planning authority and consider that the assessment of this report by the planning authority was unsatisfactory.
- 7.5.3. In my opinion the crux of this appeal is the dispute between the parties as to whether the use of their properties either as a working farm or residential property pre-dates or takes precedence over the other. I have considered the chronology of events as

outlined and I am satisfied that the agricultural sheds were in use as part of a working farm prior to the coach house being converted and occupied.

- 7.5.4. Given that the applicant refers to the fact that the original existing buildings were constructed in the 1950's and have always been used to house cattle, I would consider that the appellants were aware at the time they decided to convert the coach house in 2000 of the nature of the adjoining farm and the potential residential amenity issues associated with such a use.
- 7.5.5. While I do accept that the noise and odours associated with the housing of livestock may be a nuisance, it is primarily as a consequence of the proximity of the coach house to the farm buildings, and must be accepted by the appellants as part of living in a rural area next to a working farm.
- 7.5.6. While I do note the personal circumstances of the appellants, I would also note that no submissions were lodged from the owners of the adjacent house to the south.
- 7.5.7. I acknowledge that the motivation behind the works already carried out and in combination with the proposed development are as a direct consequence of the need to modernise the facilities and upgrade and farm practices to meet current Department of Agriculture farm building and waste management standards. I would be reasonably confident that the works will help to alleviate some of the nuisances associated with the current use. I would note that as sections of the existing facility are open the proposal to enclose further areas will in itself help to mitigate noise.
- 7.5.8. The third party refers to the intensified housing of livestock with the installation of the new slurry tanks. However, I accept the case made by the applicant that the proposed development does not result in an intensification of the use. I also accept that the proposed development does not constitute a commercial use as it relates to the operation of a working farm.
- 7.5.9. The third party refers to EPA G4 guidance document. I have had regard to the EPA Guidance Note for Noise NG4 and note that it relates to developments requiring to be licenced and as such is not relevant to the current proposal.
- 7.5.10. I have reviewed the noise report, and the response to the appeal by the applicant and I am satisfied that the proposed development and noise mitigation measures proposed will go some way to addressing the concerns of the appellants. I would also concur with the applicant that the conclusion reached in the noise report that the

applicant should either cease or move the farmyard operation elsewhere to be unreasonable and that the proposal to adopt noise mitigation measures to reduce noise emissions would be more favourable. In this regard the applicant has proposed to relocate the control box to the opposite end of the shed which will help to mitigate the noise and this can be dealt with by condition. They have also stated that it will only be used during the day and not at night. I also note that the Environment Section of the planning authority had no objection to the proposed development. On this basis I do not consider that the proposed development will impact negatively on the residential amenity of the adjoining property or result in the depreciation of the value of their property.

7.5.11. I am satisfied that the proposed development is acceptable subject to appropriate conditions.

7.6. Precedent Case

7.6.1. Regard is had to another precedent case referred to by the applicant P.A. Reg. Ref. P11/493 ABP Ref. PL24.239962. In this case located at Jerpoint Church, Thomastown, Co. Kilkenny the Board granted retention permission to retain a slatted slurry storage tank beneath a cattle shed with alterations to the cattle shed to enclose openings and infilling of the shed.

7.6.2. While it is noted that if the Board decides to grant permission some similar type conditions may be applicable relative to the agricultural development, each case is dealt with on its merits having regard to the proper planning and sustainable development of the area.

7.7. Appropriate Assessment

7.7.1. There are no watercourses in the vicinity of the site. While a leaking slatted tank could potentially contaminate groundwater, I would consider that if it is built and managed in accordance with its certification and Department of Agriculture regulations and NSAI standards, then there would be no effect on the conservation objectives of the SAC or SPA. In this regard I note the separation distances to these European sites.

7.7.2. I therefore consider it reasonable to conclude that no appropriate assessment issues arise and it is not considered that the 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. I recommend that retention permission and permission be granted.

9.0 Reasons and Considerations

9.1. Having regard to the historic use of the site for farming and related purposes, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention and the proposed development would not seriously injure the amenities of the area and would not be prejudicial to public health. The development proposed for retention and 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, completed and retained 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 development shall be undertaken in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2014, as amended. In particular, the development shall be

undertaken to minimise the generation of soiled water. In addition, the design, capacity and structural integrity of storage facilities shall prevent run-off or seepage therefrom.

Reason: In the interest of preventing pollution to surface/ground waters and ensuring the appropriate completion of the works.

3. Water supply and drainage arrangements for the site, including disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard-

(a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and

(b) all soiled waters shall be directed to a storage tank.

Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

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

4. The slatted shed shall be used only in strict accordance with a management schedule which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The management schedule shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2014, as amended, and shall provide at least for the following:

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

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

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

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

5. All foul effluent and slurry generated by the proposed development and in

the farmyard shall be conveyed through properly constructed channels to the proposed and existing storage facilities and no effluent of slurry shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

Reason: In the interest of public health.

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

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

7. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2014, as amended.

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

8. The control box which operates the scrapper currently mounted on the inside of the southern end of the shed shall be relocated to the northern end of the shed.

Reason: In the interests of residential amenity.

9. All oxidisable and galvanised surfaces of the development, including the external finishes used shall be finished/painted to match the existing, and

the painting shall be maintained and renewed as necessary.

Reason: In the interest of visual amenity.

Susan McHugh
Planning Inspectorate

18th June 2018