



An
Bord
Pleanála

Inspector's Report ABP301557-18

Development	Retention of shed, 666 square metres for use as an agricultural packing shed and fridge unit, for which planning permission for which was previously granted for a 502 square metre pack house and machinery store under Ref. No. F13A/0015. The shed is located within the curtilage of a protected structure.
Location	Drishoge, Oldtown, County Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F18/0069.
Applicant	Millview Farm.
Type of Application	Retention of Planning Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	Cathal Boland.
Observers	None.
Date of Site Inspection	4 th September, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

ABP301557-18 relates to a third party appeal against the notification of Fingal County Council to grant planning permission for the retention of a 666 square metre shed which is used for the packing of agricultural produce. Planning permission had previously been granted for a 502 square metre agricultural shed for this purpose. Retention of planning permission is sought for the larger structure on site. The agricultural shed is within the curtilage of a protected structure and is located in the townland of Drishoge, Oldtown, County Dublin. The grounds of appeal argue that the road serving the site is substandard, the proposal does not accord with the land use zoning objectives and will have an adverse impact on the residential amenities of the area.

2.0 Site Location and Description

- 2.1. The appeal site is located in the Drishoge approximately 2 kilometres to the south-west of Ballyboughal and 2 kilometres to the south-east of Oldtown, both of which are small villages in north County Fingal. The site is approximately 8 kilometres north-west of Swords.
- 2.2. The site is located on the western side of a narrow country road. It has a stated area of 4.25 hectares. A small laneway links the subject site with the access road which is referred to in the planner's report as "Drishoge Lane". The laneway provides access to a number of agricultural structures and a small single-storey detached cottage which is located on the northern side of the laneway and is listed on the Record of Protected Structures. Adjacent to the protected structure a gateway provides access to a number of sheds which are located within the subject site and are set around a concrete yard. The largest of these sheds is located to the rear and forms the subject of the current application for retention. It occupies an area of 666 square metres and comprises of a kingspan metal shed with two pitched roofs and two large roller shutter entrances on the front (northern elevation). The shed is currently used for the packing of vegetables. The wider area surrounding the site accommodates intensive market gardening agriculture and the subject shed is used for the preparation and

packing of these vegetables. The shed rises to a maximum ridge height of just under 7 metres. It is the largest building on the subject site.

3.0 Application for Retention of Permission

- 3.1. Under Reg. Ref. F13A/0015 planning permission was granted to Millview Farm for the demolition of an existing timber agricultural shed and its replacement with a new shed for the packing of vegetables and a machinery store and all associated works. The planner's report which is attached to the rear of the file indicates that the proposed shed to be built on site had a gross floor area of 502 square metres and a maximum height of 7.9 metres. The actual shed constructed on site occupies a gross floor area of 666 square metres. The shed was extended beyond the footprint of the permitted structure in an easterly direction by approximately six metres along its entire length (28.5 metres). This has resulted in an additional gross floor area of approximately 164 metres. The shed constructed on site is approximately 1 metre lower in height than that permitted under the original permission (F13A/0015). Retention of planning permission is sought for the structure as constructed on site.

4.0 Planning Authority's Decision

Fingal County Council granted planning permission for the proposed development subject to four standard conditions.

4.1. Planning Authority's Assessment

- 4.1.1. A planning application was lodged with Fingal County Council on 15th February, 2018. An observation objecting to the proposal was submitted by the current appellant the contents of which have been read and noted.
- 4.1.2. A report from Irish Water stated that there was no objection subject to standard conditions.
- 4.1.3. A report from the Transportation Planning Department notes that the proposed development is located on a narrow substandard road governed by the 80 km/h speed limit. It is stated that the current entrance layout is excessively wide and the layout should be redesigned to significantly reduce the overall entrance width. It is

unclear from the information submitted if the proposed development will result in an intensification of use of the existing entrance. It is also stated that the sightlines provided on the drawing submitted. It is stated following a site visit it was noted that sightlines indicated to the north were not achievable and were impeded by an existing tree. It is stated that the width of the road and the poor horizontal alignment at this location restrict vehicle speeds and the applicant should carry out a speed survey to confirm the 85th percentile speed of the road. In this regard further information is required.

- 4.1.4. A report from the Water Services Department stated that there is no objection subject to standard conditions.
- 4.1.5. The planner's report note details of the proposed development and notes that the current application indicates that the structure as constructed comprises of 214 square metres as a fridge unit, 196 square metres as a packing shed and 250 square metres as "pack house". It is stated that it is no longer proposed to store machinery within the structure. It also notes that the material finishes of the shed are as permitted.
- 4.1.6. The report states that the use of the structure as an agricultural pack house and packing shed is an analogous to an agricultural building and agricultural buildings are permitted in principle under the RU zoning objective. It is noted that under the parent permission the structure granted is not dis-similar in scale to that currently before the Planning Authority. It is also noted that details of the operation including hours of operation etc. was submitted as part of the original application under Reg. Ref. F13A/0015). It is noted that nine staff are employed from 8 a.m. to 5 p.m. The principle of the use is therefore considered to be acceptable. The proposal integrates with the existing structure on site and does not result in any adverse impact on the visual amenity of the area. It is also considered that the proposed development will not have any undue negative impacts on the amenity of adjoining properties nor will it have any adverse impact on the protected structure.
- 4.1.7. Notwithstanding the fact that the Transportation Planning Section has requested additional information, it is argued that given the distance between the structures permitted and that now proposed that it is not considered necessary to revisit the issue of sightlines and request additional information as suggested in the

Transportation Report. It is further considered that this issue was appropriately addressed in the previous application on site. Finally, the planner's report notes that there will be no adverse impact on Natura 2000 sites in the vicinity and therefore the proposed development is acceptable. Fingal County Council therefore issued notification to grant planning permission subject to four conditions.

5.0 Planning History

- 5.1. Details of three applications relating to the subject site are contained in a pouch to the rear of the file and are summarised below.
 - 5.1.1. Under Reg. Ref. F08A/1442 Fingal County Council refused planning permission for the construction of a new agricultural entrance and associated works for four reasons primarily relating to the removal of hedgerows to facilitate the new entrance.
 - 5.1.2. Under Reg. Ref. F13A/0015 Fingal County Council granted planning permission for the demolition of an existing timber shed and the construction of a new packing shed and machinery store for the gross floor area of 502 square metres. Permission was granted on 10th May, 2013.
 - 5.1.3. Under Reg. Ref. F18A/0029 planning permission was sought for the retention of a new entrance and improved sightlines and parking to the rear. At the time of writing this report this application was the subject of an additional information request (20th March, 2018) and has not been the subject of any decision by Fingal County Council to date.

6.0 Grounds of Appeal

The decision of Fingal County Council to issue notification to grant planning permission was the subject of a third party appeal by Cathal Boland. The grounds of appeal are outlined below.

- It is argued that the subject site is serviced by a narrow country road which at certain points is not capable of accommodating two-way traffic. The roadway is widely used for recreational walking and cycling. There are also a number of protected structures on the road (referred to in the grounds of appeal as a lane) and the on-going intensification of additional traffic represents a threat to

their stability and security. The lack of sightlines and the fact that the road serving the site acts as a rat-run for traffic accessing Swords also is a cause for concern from a traffic safety point of view. The potential additional traffic and noise resulting from the unrestricted working hours has an adverse impact on the residential amenities of the area.

- It is also argued that the proposal is contrary to the zoning objective as it caters for food which is produced outside the farm holding. It is stated that the farm size is a mere 4.25 hectares in size and the packaging facility provides capacity far in excess of the production capacity of the farm. The planning report appears to have given no consideration to the considerable increase in production capacity over the development granted in 2013. There is no commentary on how the produce will be sourced or the product distributed.
- The entrance access to the site raises concerns and this issue is not addressed in the grant of permission.
- The site is located within the curtilage of a protected structure and the Board are requested in the event that planning permission is granted that the applicant restore the protected structure and its related buildings.
- Should the Board decide to grant planning permission it is also requested that a condition be included requiring the entrance to be reduced in size to that approved under F13A/0015. It is also requested that restrictions be placed on the opening hours and that food only produced at the farm holding be permitted to be processed.
- The Board are also referred to the report from the Transportation Planning Department and the report from the Water Services Department and the issues raised in these reports should be taken into consideration in assessing the application.

7.0 Appeal Responses

7.1. Fingal County Council's Response to the Grounds of Appeal

It states that the issues raised in the appeal submission generally reiterate the issues raised in the third party submission received by the Planning Authority and these issues have been addressed in the planner's report. Having assessed the appeal submission and the original application it remains the opinion of the Planning Authority that the overall development is considered acceptable subject to appropriate conditions. An Bord Pleanála is requested to uphold the decision of the Planning Authority and that Condition No. 4 (financial contribution condition) is included in any grant of planning permission by the Board.

7.2. Applicant's Response to the Grounds of Appeal

A response was received on behalf of the applicant by Eddie Gribbin. The response is set out below.

It is stated that the applicant contrary to what is stated in the grounds of appeal was made correctly and had to satisfy the validation process of the Planning Authority. At no time was there an attempt to mislead the Planning Authority.

The applicant is fully aware that the development is within the curtilage of a protected structure and therefore that planning permission was required.

It is acknowledged that the service road is narrow with restricted sightlines. People living and using the road are aware of this and it is stated because of this the speed limit of 80 kilometres per hour is seldom maintained. There are many farms in the area reliant on such narrow roads and these farms are reliant on 40 foot trucks for deliveries and supply of produce.

To restrict operating hours for any farm is unreasonable and shows a total lack of understanding of agricultural activity. Pack houses work to order with the summer being busier than the winter and it is not unusual to hear tractors in the summer working in the fields until late at night. The farm site is 4.25 hectares but the applicant has rented lands in the surrounding catchment. Furthermore, it is argued that no intensification has taken place and it is suggested that turnover has possibly reduced in this period. The number of staff fluctuates seasonally.

The entrance has been modified in recent times with the removal of hedgerow to the north of the property and this gives the appearance of widening the entire entrance.

In relation to the protected structure it is contended that the conservation officer has determined that only the cottage was worthy of protection status and that the outbuildings need not be restored.

It is stated that under the guidance of the conservation officer the cottage has been totally restored with the help of grant aid. The cottage is now reused by a member of the applicant's family. It is not accepted that the proposed development would detract from the cottage.

Finally, the response goes on to argue that the financial contribution levied by Fingal County Council in this instance (€44,695) is excessive and is based on the overall size of the development failing to take into account the existing structure on site.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Fingal County Development Plan 2017 – 2023. The subject site is governed by the zoning objective “RU” – to protect and promote in a balanced way the development of agriculture and rural related enterprises, biodiversity, the rural landscape and the built and cultural heritage.
- 8.2. Section 5.3 relates to the rural economy and enterprise. The plan recognises that agricultural activity plays a very important part in the economic life of rural Fingal. The Council will encourage farming practices and production methods that have regard to conservation landscape protection and the protection of wildlife habitats etc. Sustainable agricultural practices will be encouraged to ensure that development does not impinge on the visual amenity of the countryside or the architectural heritage of the county.
- 8.3. Objective RF74 seeks to support the maximum number of sustainable working farms within the county and to ensure that any new development does not irreversibly harm the commercial viability of existing agricultural land.
- 8.4. The plan also goes on to state that the horticultural sector within Fingal plays a vital role in both the local and national economy. The Council recognises the importance

of this sector and the need to protect productive horticultural land from inappropriate industrial, commercial or residential development. The development of a well-managed, sustainable horticulture sector which can capitalise on the proximity to available markets in the Greater Dublin area and beyond will be supported and facilitated.

- 8.5. Objective RF77 seeks to support and facilitate horticultural development in Fingal encouraging the establishment/expansion of new enterprises where appropriate.
- 8.6. Objective RF78 seeks to support and facilitate the development of environmentally sustainable horticultural practices.
- 8.7. Objective RF79 seeks to support and facilitate the growth of the agri-food sector in Fingal.
- 8.8. With regard to agri-business the development plan states that agri-business refers to business which is directly related to the agricultural and horticultural sectors involving the processing of produce of which a significant portion is sourced locally. The creation of value added products is an important aspect of agri-business which can complement locally sourced produce and increase competitiveness and innovation. The Council will support and facilitate existing and new agri-businesses within Fingal and will engage and collaborate with key stakeholders, relevant agencies, sectoral representatives and local communities to develop agri-business in Fingal.
- 8.9. Objective RF83 requires that any proposal to locate an agri-business within the rural area is supported by a comprehensive traffic impact study of the vehicular, including HGV, traffic generated by such an enterprise.

9.0 **Assessment**

I have read the entire contents of the file, have had particular regard to the planning history relating to the site, and the issues raised in the grounds of appeal. I have also visited the subject site and its surroundings.

The critical issues in determining the current application and appeal before the Board are as follows:

- Principle of Development on Site
- Traffic and Transport Considerations

- Impact on Residential Amenity
- Impact on the Protected Structure within the Curtilage of the Site
- Other Issues

9.1. Principle of Development on Site

9.1.1. The principle of the use of the lands in question for the preparing and packing of vegetables have already been assessed and deemed to be acceptable to the Planning Authority under the parent permission relating to the site F13A/0015. It is clear from this grant of planning permission that the applicant has obtained consent to use the subject site for the preparation and packing of vegetables. The subject site is located in a rural part of Fingal and is surrounded by large tracts of land which are used for agricultural purposes. The development is clear and unambiguous in highlighting the vital role in which horticulture plays in the local economy. The Council recognises the importance of this sector and the need to protect productive horticultural land within the county. The use of the subject site to provide for the preparation of produce sourced in the local area is fully in accordance with the stated objectives contained in the development plan with regard to agriculture and horticulture. It is clear therefore that the existing use on site has already been authorised and established and that this use is fully in accordance with the land use zoning objective relating to the site which seeks to protect and promote the development of agricultural and rural related enterprise and also complies with various policy statements with regard to horticultural activity in the county.

9.1.2. With the above in mind the main question before the Board is whether or not the retention of a larger shed to accommodate such activity is acceptable and in accordance with the proper planning and sustainable development of the area. With this specific issue in mind the grounds of appeal argue that the retention of a larger shed constitutes an unacceptable intensification of activity on the subject site and is also contrary to the zoning provisions contained in the development plan in that the existing facility involves the preparation and packing of produce sources from outside the farm. In response to this issue in its response to the grounds of appeal states that the farm size site is 4.25 hectares and that the applicant also rents lands in the surrounding area. I can find no specific statement in the Fingal County Development Plan which requires that agricultural buildings must only provide for the preparation

of produce sourced from the individual farm/site as suggested in the grounds of appeal. It is reasonable in my view that a farm would import agricultural produce in the wider area for preparation/packing and that such buildings would not be restricted to only prepared produce associated with the farm in question.

- 9.1.3. With regard to the intensification of use under the current application the applicant has indicated that there has been no material intensification of use with regard to hours of operation, numbers of employees and traffic generation etc. On the contrary the applicant suggests that output may in fact be below the original output associated with the enterprise five years ago. I am not in a position to verify whether or not activities have increased or decreased on the site over the previous five years. I do note however that the increase in floor area for which retention of planning permission is sought amounts to 164 square metres and this amounts to less than a third of the size of the original shed granted permission. Having inspected the site the activity was not particularly intensive. It involved less than a half dozen persons manually cutting the stalks off vegetables and packing them in crates to be removed off-site. There was no intensive machinery operating on the site during my site inspection. The increase in size of the shed for which retention of planning permission is sought will not in my view have any material impact in planning terms having regard to the nature of the activity carried out on site.

9.2. Traffic and Transport Considerations

- 9.2.1. The grounds of appeal argue that the roadway/lane serving the site is substandard and is of insufficient width to cater for the development for which retention of planning permission is sought. The Board will have regard to the fact that there is an established enterprise on the site in question which has the benefit of planning permission. The extant planning permission implies that the Planning Authority accepted that the road network was deemed suitable and sufficient to accommodate the enterprise in question. I have argued above that any intensification arising from the construction of a larger shed for which retention of planning permission is sought is not material. I do not consider that it would give rise to additional levels of traffic generation which would warrant a refusal of permission in this instance on the grounds that the proposal would have an unacceptable impact in terms of traffic generation.

- 9.2.2. Furthermore, a separate planning application has been lodged with the Planning Authority under Reg. Ref. F18A/0029 (see planning history above). This application seeks permission for the retention of a new entrance with improved sightlines and parking at the subject site. This application is the subject of additional information request by the Planning Authority which seeks further information in relation to sightlines and entrance arrangements etc. In my view it would be premature to refuse planning permission for the proposed development on access and entrance arrangements pending the determination of the separate application which seeks to specifically address this issue.
- 9.2.3. Finally, in relation to transport and traffic I note that the road network in the wider area is relatively poor in terms of width and alignment and is typical of a road network in a wider rural area. It would in my view be inappropriate for a rural enterprise which is totally reliant on rural produce produced and sourced in the local area on the grounds that the road network serving the enterprise is deemed to be substandard and deficient in terms of width and alignment.

9.3. **Impact on Residential Amenity**

As already stated the operations on site are not deemed to be significantly intensive. My site observations indicated to me that vegetables are prepared and packed manually and the proposal does not involve the operation of large scale machinery which could give rise to excessive noise. I also note that there are no residential dwellings in the immediate vicinity of the subject site other than the protected structure at the entrance and it appears from the information contained on file that this is occupied by a member of the applicant's family. The nearest third party dwelling is located over 70 metres to the north of the subject site and there are no other dwellings in the vicinity. Furthermore, it is reasonable in my view that an agricultural enterprise such as that operating on site is appropriate for a rural area.

9.4. **Impact on the Protected Structure**

- 9.4.1. The single storey cottage located adjacent to the access road is located 50 metres from the shed in question. Furthermore, there are a number of sheds and outbuildings between the structure which is the subject of the current application and appeal and the protected structure. The shed in question is located c.80 metres back

from the public road and in no way interferes with the setting or context of the protected structure having particular regard to the nature of the existing environment.

9.4.2. With regard to imposing a condition requiring the applicant to replenish the protected structure on site I do not consider such a condition is warranted or justified in this instance. It is clear from my site inspection that the protected structure is occupied at present and the applicant has indicated that he replaced the roof recently in accordance with the requirements of the construction officer. I do not consider it necessary that further works to the protected structure should be initiated as part of a grant of retention of planning permission under the current application.

9.5. **Other Issues**

9.5.1. The grounds of appeal suggest that the application is erroneous and misleading. Details of the nature of the errors are not indicated in the grounds of appeal. However, a number of issues were raised in the original observation submitted to the Planning Authority. It suggests that the applicant's details are misleading and details of the original application granted planning permission under F13A/0015 were not properly described in the site notice. I think the site notice adequately describes the nature and extent of the proposal under the current application. I note that the Planning Authority also considered this to be the case as it did not invalidate the application or request that further information be supplied on these issues prior to the application being made. It also appears that the appellant in this instance has not been prejudiced in any way on the basis of the information supplied.

9.5.2. Finally, the grounds of appeal suggest that were the Board minded to grant planning permission for the proposed development a number of conditions should be attached. These included the following:

- That restrictions be placed on the operating hours. I do not consider it necessary that restrictions be placed on the operating hours of the proposal having regard to the fact that the development in my opinion does not give rise to any significant residential amenity issues. Furthermore, I am mindful of the fact that the enterprise on site is predicated on agricultural production and harvesting. Therefore, it is appropriate in my view that there would be some flexibility in terms of the hours of operation. I stress however that the nature of the activities undertaken on site would not in my view give rise to significant

impacts on surrounding residential amenity. The appellant lives in a rural area where agricultural practices predominate and are dictated by daylight hours, weather patterns etc. By its nature agricultural activity occurs when weather dictates.

- The grounds of appeal also suggest that a condition be attached whereby only produce from the site be permitted to be processed. Again I do not consider such a condition to be appropriate or necessary. It is reasonable in my view that the applicant be permitted to process and pack agricultural produce from the wider area in order to enable the enterprise to be viable.
- The grounds of appeal also request that a condition be required that hedges and drains be reinstated as part of any grant of planning permission. Again I consider that this issue would be better dealt with under the concurrent application in relation to the site entrance F18A/0029 as this application specifically relates to access and sightline issues associated with the entrance.
- For reasons already stated above I do not consider it appropriate or reasonable that the applicant be required to reinstate the protected structure as a condition to grant retention of planning permission in the current application.

9.5.3. Finally, the applicant in response to the grounds of appeal suggest that the financial contribution condition (Condition No. 4) of the Planning Authority's decision to grant planning permission is onerous and should be reduced. I do not consider it appropriate that the Board deal with this issue by way of a first party's response to the grounds of appeal. If the first party had concerns in respect of the financial contribution condition applied, it should have raised this issue by way of a valid first party appeal against the condition in question. It is not appropriate to ride on the coattails of a third party appeal to seek redress in respect of any condition attached by the Planning Authority in issuing a grant of planning permission or retention of planning permission.

10.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, 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.

11.0 Conclusions and Recommendation

Arising from my assessment above I consider the retention of the enlarged shed to be appropriate and would not have any significant material impacts on the surrounding environment or the residential amenities of the area. I further consider that the use of the shed for preparing and packing agricultural produce is appropriate for the site in question and fully accords with the land use zoning objectives for the site. I therefore recommend that the decision of Fingal County Council be upheld in this instance and that planning permission be granted for the proposed development.

12.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

13.0 Reasons and Considerations

It is considered that the development for which retention of planning permission is sought fully complies with the zoning objective as it relates to the site and subject to conditions set out below would not seriously injure the amenities of the area, 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.

14.0 Conditions

1. The development shall be retained in its entirety in accordance with the plans and particulars and specifications lodged with the planning application, except as may be required in order to comply with other conditions set out below. 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 the 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 structure hereby permitted shall be used for agricultural purposes only, specifically the packaging and storage of locally produced agricultural produce. The structure shall not be let or used by third parties. The structure shall not be used for the keeping of animals or livestock. No direct retail trade or industrial activity shall be permitted in the structure. Any change of use from that specified above shall be the subject of a separate application for planning permission.

Reason: In the interest of orderly development and the protection of residential amenities.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. The developer shall pay to the planning authority a financial contribution of €44,695 (forty-four thousand six hundred and ninety-five euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Paul Caprani,
Senior Planning Inspector.

11th September, 2018.