



An
Bord
Pleanála

Inspector's Report ABP-301790-18

Development	Retention of 4 no. metal containers for domestic storage and animal feed, for stables, to rear of existing dwelling house and all associated site works.
Location	Tateetra, Newtownbalregan, Dundalk, County Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	17674
Applicant(s)	Tom Rogers
Type of Application	Retention
Planning Authority Decision	To grant with conditions
Type of Appeal	Third Party
Appellant(s)	David and Patricia Murphy
Observer(s)	None
Date of Site Inspection	29 th August 2018
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The appeal site is situated in the townland of Tateetra, Newtownbalregan, Co. Louth. It lies to the west of Dundalk town, c.100m west of the M1 and c.500m north of Junction 17.
- 1.2. The site lies on the southern side of the county road and comprises a residential dwelling, with a small stable block (with hay loft above), associated yard and grazing land to the rear. The field extends from the rear of the residential property to the west. The proposed containers are situated outside of the current timber fence marking the north-western boundary of the field. They open onto a concrete hard standing which forms part of the yard area associated with the adjoining factory building, A. P. Controls Ltd (see photographs). The field is bounded the residential property and mature hedgerows along its other boundaries.
- 1.3. To the south east and north of the appeal site are residential properties. The appellant's property lies to the north east of the proposed containers, to the south east of the factory building.

2.0 Proposed Development

- 2.1. The proposed development, as revised by way of further information (received on the 19th April 2018) comprises the retention of 4 no. metal containers used for domestic storage (sticks, logs etc.) and animal feed (including hay) for three horses, kept in the stables to the rear of the residential property on the site. The applicant states that 8 no. of round bales can be stored in each of the containers. The applicant states that the containers are sited on an elevated part of the site, away from the existing stables, which is not prone to flooding.
- 2.2. Access to the site is from the public road, via the access serving the existing residential dwelling. The applicant states that sightlines of 75m x 4.5m x 1.05/0.6m can be provided at the entrance to the site but this would require extensive removal of the existing mature hedgerow and stone wall. Instead, a setback of 3.0m is proposed, permissible under 'difficult circumstances' (Table 7.4 of CDP) and would

significantly reduce the amount of existing roadside boundary to be removed whilst also complying with TII requirements (Geometric Design of Junctions, TII, April 2017). The applicant states that the development will result in negligible additional traffic to the site and will have no material impact on the use of the existing entrance. (The applicant states that legal agreement for lands to the north of the existing entrance was submitted with PA ref. 16/397). The appeal site will be fenced off from the factory development to the north of the site.

2.3. Accompanying the planning application for the development are:

- Flood Risk Assessment – This indicates that the central part of the agricultural field, to the south of the containers, which is lower than the adjoining concrete yards to the north and south of the field, is prone to pluvial flooding. Further, the FFL of the containers has a freeboard of c.0.5m above pluvial flood level. Run off from the roofs of the containers will discharge directly to the stone surfaced area surrounding the containers. The report concludes that the development is not at risk of flooding and will not exacerbate flood risk.
- Effluent calculations (for stabling) – This is based on the stabling of 5 no. horses and sets out a requirement for a storage area of 26.55sqm for farmyard manure and a tank of 10.8cubic metres for soiled water. (A concrete hard standing of 30sqm and a underground storage tank of 12 cubic metres are shown on the Site Plan, drawing no. TR2-001).

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 11th May 2018 the planning authority decided to grant permission for the development subject to 6 no. conditions, including the following:

- No. 2 – Requires the applicant to erect and maintain, within 6 months of the grant date, a post and rail fence between the proposed development and the adjacent commercial property, to prevent vehicular access between the two properties.

- No. 3 – Specifies that the containers are to be used for agricultural storage only.
- No. 5 – Development contribution.
- No. 6 – Requires provision and maintenance of 75m sightlines in each direction, as 3.0m back from the edge of the carriageway, and as appropriate diversion of utilities, road opening licence, repair of the public road and the avoidance of spillage of dust/dirt on the public road.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 25th October 2017 – Refers to planning policies in respect of the site and its planning history. It assesses the merits of the proposed development under a number of headings including, the design, scale and form of the development and its impact on the residential amenity of adjoining properties, flood risk, roads and parking. It recommends further information in respect of the location of the containers on the site (to be situated to the south east of the site close to the existing stables or dwelling house); restricting use of the factory entrance to light industrial use; fencing to separate the factory area and agricultural area; sightlines, internal access road and drainage; justification for number of storage units; details of permissions associated with stables/other containers on site.
- 9th May 2018 – Recommends permission be granted for the development subject to conditions.

3.2.2. Other Technical Reports

- Infrastructure (18th October 2017) – States that the existing access to the site is through the adjacent commercial property, which has not been indicated to be in the ownership of the applicant. Recommends further information with the applicant indicating 75m sightlines at the entrance to the site (4.5m setback), evidence of legal entitlement to carry out any required works to achieve these sightlines, arrangements for access to the containers within the site and drainage provision.

- Infrastructure (8th May 2018) – No objections subject to conditions.

3.3. Prescribed Bodies

- No comments.

3.4. Third Party Observations

- 3.4.1. On file is one objection to the proposed development from a third party (the occupant of the property to the north east of the containers). It is made on the grounds that the site is not in the ownership of the applicant and he does not have the consent of the owner (the observer) to make the application.

4.0 Planning History

- PA ref. 16/397 - Permission was refused for the retention of 4 no. containers for agricultural storage on the appeal site (same location as proposed in this appeal) on the grounds that the development would endanger public safety by reason of traffic hazard as the applicant had not adequately demonstrated the required setback distance of 4.5m for non-domestic developments at the proposed entrance to the site (Table 7.4 Louth County Development Plan, 2015-2021). In this instance, the applicant sought use of the existing factory entrance along with the existing family home entrance for the delivery of hay and moving horses.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The appeal site lies in development control zone 4 of the Louth County Development Plan 2015 to 2021. The objective of the zoning is to provide for a greenbelt area around the urban centre of Dundalk. Limited development, permissible in the zone includes agricultural developments, extensions to existing authorised uses and farms (Policy RD 37). Large scale industrial and commercial developments are considered to be inappropriate within the zone (Policy RD 38).

- 5.1.2. Policies in respect of agricultural buildings require development to be integrated with the countryside, provide adequate waste collection and storage facilities and are designed and constructed to water bodies are protected from pollution (RD13, RD 14 and RD 15). Policy ENV 33 states that new development should be avoided in areas at risk of flooding.
- 5.1.3. Table 7.4 of the Plan sets out minimum visibility standards for new accesses and the intensification of use of existing accesses. Where an intensification of an existing access is proposed, onto a local road, 75m sightlines are required, over a distance of 0.6 to 1.05m, 3m back from the edge of the carriageway, for 1 to 6 houses, and at 4.5m back from the edge of the carriageway for more than 6 houses and non-domestic developments.

5.2. **Natural Heritage Designations**

- 5.2.1. The appeal site lies c.2km to the west of the nearest Natura 2000 site (Dundalk Bay SPA) and c.3km to the north east of nearest pNHA (Drumah, Toprass and Cortial Loughs) – see attachments.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The third-party appellant makes the following arguments in respect of the development:
- Background/unauthorised use – The containers were erected on site over three years ago and have been used in association with the adjoining light industrial premises. The containers are indicative of unauthorised development carried out on the applicant's residential and industrial properties. They cannot be considered an extension to an authorised use.
 - Inappropriate form of green belt development – The containers are an inappropriate form of industrial makeshift development that is incongruous with the agricultural/rural setting and contrary to the objectives for Development Control Zone 4. The scale of the containers conflicts with Policy RD 38. The applicant is not a farmer so the scheme cannot be deemed an

appropriate farm diversification project. The keeping of horses for personal and recreational use is not an agricultural activity. The containers are removed from the stables and the applicant puts forward no credible reason for their need. The development would set an inappropriate precedent.

- Access – Hay bales can only be delivered by articulated vehicle. No information is provided to demonstrate how these can access the site or on the number of vehicle movements associated with the development (and the existing container on site). The containers should be re-orientated to serve the proposed agricultural purpose. The hay bales to be stored on site will weigh up to a tonne. These will have to be moved on site by a fork lift or similar vehicle. Such bales need to be stored in well ventilated structures. The proposal to fence off a section of the light industrial yard will result in a cramped and unworkable gap that is too small for a vehicle to manoeuvre safely in when depositing/extracting round bales. The proposed access through the appellant's property is impractical and cannot be enforced.
- Justification for scale and location of development – The OPW's Flood Risk Map does not indicate any flooding on the site and the Catchment Flood Risk Assessment and Management mapping system does not identify the appeal site as being at risk of flooding. The applicant has provided no information to support his claim that the area near the stables floods. The containers could be sited here and elevated above ground to prevent damage to stored feed.
- Legal ownership – The central part of the field, adjoining the containers, is owned by the appellants and they do not consent to the inclusion of their lands in the application, or for the applicant to traverse the lands to access the containers from his dwelling. Whilst this is a legal matter, the appeal site will be separated and dislocated from the applicant's residential dwelling. Sticks, logs, hay etc. delivered via the existing domestic entrance cannot be transferred over the field to the containers, which will force delivery of these via the existing light industrial entrance. The physical and legal partition of the appeal site from the applicant's residential property will nullify the description of the development as domestic i.e. they are not connected to a residential curtilage. In failing to request documentary evidence of ownership from the

applicant, a fundamental and critical issues as to the viability and workability of the container's use has been overlooked.

6.2. Applicant Response

6.2.1. The applicant makes the following additional comments in response to the appeal:

- Ownership of lands – Is not relevant to the appeals as the application pertains to the containers alone. Notwithstanding this, it is clear from the inspection of the lands, that the area to the rear of the applicant's dwelling has been in his sole and exclusive occupation and possession for in excess of 12 years, sufficient to acquire a possessory title to the lands.
- Flooding – This occurs on lower lying land near the stables because of overland flows, and is localised to his field. The containers are located on higher land which is not prone to flooding.
- Traffic – Traffic movements are made between the stables and the containers (see photographs attached to submission). The applicant would agree to closing the entrance between the factory sheds and the paddock, contain movements to and from the stables to the domestic entrance and retain the factory entrance as wholly separate.
- Need – The stables on the appeal site are used to house horses. The applicant has farmed the land for a number of years and planning permission is not required to do so. The containers are required to store feed year (round bales). The fourth container is used to house logs/sticks for domestic use. The farm has been operated in this way for a number of years and there would be no increase in traffic movements. Bales are moved from the containers by forklift to the stables. Permission is required solely for housing bales as it is no longer feasible to store the hay required off site.
- Unauthorised development – The Council is aware of the farm and industrial building (built over 40 years ago) and no enforcement notice has ever been issued to him or onto his lands. The stables were built over 20 years ago and are not the subject of any enforcement.

- Development Plan – The development is compliant with Development Zone 4 as it is a farm. It is not a large scale industrial or commercial development.

6.3. **Planning Authority Response**

6.3.1. The planning authority make no further comments on the appeal (2nd July 2018).

6.4. **Observations/Further Responses**

6.4.1. None.

7.0 **Assessment**

7.1. Having regard to the appeal and my inspection of the site, I consider that the key issues for this appeal relate to the following:

- Principle of the development/compliance with policy.
- Access.

7.2. The appellants also raise issues regarding the ownership of lands and unauthorised developments on the site. I comment on these as follows:

- Land ownership - From the information on file, it is evident that two parties, the appellant and the applicant, claim ownership to the appeal site (in part and in whole respectively). This matter is a legal one, that cannot be determined in the course of the appeal. However, I would accept that the applicant has put forward evidence of sufficient legal interest for the Board to determine the application. Any such permission, would not of itself confer the right to develop land.
- Unauthorised developments – This is a matter for the planning authority and falls outside the scope of the appeal system.

7.3. **Principle of the development/compliance with policy.**

7.3.1. The appeal site lies within 'Zone 4' lands in the current Louth County Development Plan, the objective of which is to provide a greenbelt around the urban centre of Dundalk i.e. a clear distinction between the built-up areas of settlements and the

surrounding countryside. Within the zone, agricultural development is permitted, together with extensions to existing authorised uses and farms (policy RD 37). Large scale industrial and commercial developments are not considered appropriate within the zone (policy RD 38).

- 7.3.2. The existing uses on the appeal site comprise a residential property, stables and an agricultural field, that appears to be used to graze horses (one horse and a foal were on the site at the time of site inspection). The development is stated to be needed to house bales of hay to feed 3 to 5 horses on site (with up to 8 bales stored in each), and for sticks/wood for the applicant's domestic use.
- 7.3.3. At the time of site inspection, I observed round bales in two of the four containers and remains of hay in the others, and it is evidently possible to store hay in them (I also noted storage of equipment/machinery behind bales, see photograph 2).
- 7.3.4. The proposed uses, storage of feed and domestic sticks etc. whilst associated with a residential dwelling are a mix of agricultural and domestic uses. As such, they would be, in principle, consistent with the policies in respect of Zone 4 lands.
- 7.3.5. The containers are removed from the existing stable block (see photographs) and face and open onto the concrete yard associated with the factory premises, to the north of the appeal site. Ideally, any development associated with the existing stable block should be situated close to existing development, to provide a cluster of development and ingress into undeveloped 'green belt' land.
- 7.3.6. The applicant has argued that land near the stables is subject to localised flooding (from overland flows) and the containers have therefore been placed on higher land within the holding. I note that the OPW's flood maps (<http://www.floodinfo.ie/map/floodmaps/>) do not indicate that the site is prone to pluvial flooding. However, I would accept that given the difference in levels on site, overland flows could give rise to ponding/flooding on lower lying parts of the site and that it would be appropriate to site the containers outside of this area. Notwithstanding this, there is a small concrete yard near the existing stable block and the applicant has not indicated why this area cannot be used for the containers. The Board may wish to seek further information in this regard. In the interim, I comment on the merits of the development as it is presented by the applicant.

7.3.7. As constructed, the containers are sited to the rear of the concrete yard to the north of the appeal site and visually 'read' with the existing industrial unit. They are also painted green and are seen against a backdrop of mature trees (see photographs) and are not visible from the public road. As constructed I consider that they are integrated into the existing built environment and do not demonstrably extend the urban area. However, this conclusion is predicated on the use of the containers being strictly confined to storage of hay and sticks/wood (i.e. not facilitating the intensification of factory related uses). Accordingly, I consider that it would not be inconsistent with the detailed objective of the Zone 4 lands.

7.4. **Access.**

7.5. The applicant proposes accessing the containers via the existing access and drive to the residential property to the south east of the appeal site, with movement of bales from the containers to the stable block (and hay loft) by forklift. (I note that in the applicant's response to the request for further information, photographs are submitted of the entrance to the factory development, NOT the appeal site).

7.6. Notwithstanding the above, there is no information on file regarding the number of likely vehicle trips associated with the proposed development, the size of vehicle required to carry bales to the site (which can weigh up to a tonne, or 1000kg) or the capacity of the drive to accommodate such vehicles.

7.7. Teagasc estimates that a large horse (16 hands high) requires 13.5kg of total food per day (<https://www.teagasc.ie/media/website/publications/2016/Horse-Ownership.pdf>). It is therefore likely that the storage of up to 32 bales on site would give a food stock of >6months and deliveries to the site would be quite limited. Further, loads could be stepped down into smaller vehicles. In view of this I consider that the matter of internal access to the site can be dealt with by condition (see schedule).

7.8. The applicant indicates that sightlines of 75m can be provided at this existing access, at a reduced set back of 3.0m. He argues that this would prevent the unnecessary loss of established roadside boundaries and would fully comply with TII's standards for junction design for minor road use (as set out in their publication *Geometric Design of Junctions*, TII, 2017). This argument has been accepted by the

planning authority and, having regard to my inspection of the site and the modest use of the access to the site, I would accept that such provision is in principle possible, and consistent with current standards for minor accesses (see attachments for TII policy). However, I would recommend a condition requiring evidence of provision to be submitted to the planning authority.

8.0 Environmental Impact Assessment: Screening

8.1. The proposed development is of a type that does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended). The need for screening for environmental impact assessment is therefore not required.

9.0 Appropriate Assessment

9.1. Having regard to the limited and modest nature of the proposed development, which comprises retention of an existing containers, with no discharges from the site, as a consequence of the development, 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.

10.0 Recommendation

10.1. Having regard to the above, I recommend that permission for the development be granted subject to condition.

11.0 Reasons and Considerations

Having regard to the agricultural use of the proposed development, its scale and form and location adjoining existing rural development and removed from the public road, it is considered that the proposed development, subject to compliance with the conditions set out below, would be consistent with the policies of the Louth County Development Plan 2015 to 2021 for land falling within development control zone 4, greenbelt, and would be acceptable in traffic safety. The proposed development

would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 19th day of April 2018 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. Within 6 months of the date of this Order, the following shall be submitted to the planning authority:
 - i. A post and rail fence shall be erected and maintained between the proposed development and the adjoining commercial property, as indicated on Site Plan, Drawing No. TR2 – 001 Rev A. There shall be no vehicular access between the two properties.
 - ii. Evidence of provision of 75m x 3.0m x 1.05/0.6m at the entrance to the site.
 - iii. Evidence of number and size of delivery vehicles and capacity of the driveway to accommodate these.

Reason: In the interest of orderly development.

3. The containers shall be used for agricultural storage only.

Reason: In the interest of orderly development.

4. The developer shall pay to the planning authority a financial contribution 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.

Deirdre MacGabhann
Senior Planning Inspector
11th September 2018