



An
Bord
Pleanála

Inspector's Report ABP-301985-18

Development	Retention of agricultural building as an animal shelter, permission for extension to existing agricultural shed to be used as an animal shelter as part of the above,
Location	Crag, Castleisland, Co Kerry
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	17/989
Applicant(s)	AHAR.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Carol Carty
Observer(s)	None
Date of Site Inspection	22 nd November 2018

1.0 Site Location and Description

- 1.1. The application site, (stated area 0.7771 ha) is located in a remote rural location c. 4 Km north-west of Castleisland and c. 4.7 Km east of Ballynacelligott Post Office, north of the N21 in County Kerry.
- 1.2. There was a large galvanised agricultural shed on site as well as a self-contained steel container in use as an office / toilet and a mobile home. There are derelict farm structures in the area. At the time of my site visit the large agricultural shed was split into a horse stabling area and a dog compound area. The dog compound area was intensively used to house a large number of dogs of all breeds and sizes. The horse stabling area was not in as intensive a use as equines were still grazing out-doors. The area to the north / rear of the existing farm building was in use as an outdoor / external waste and feed storage area. An out-door dog pen was located to the south side of the shed at the entrance. A car park area for workers / volunteer's jeep and trailer, tractor and trailer area is located to the front / south of the farm building.
- 1.3. The site is accessed via a private unsurfaced lane, such that the shed is located c. 0.72Km from the nearest public road to the south. The site is surrounded by agricultural / pasture lands on all sides. The nearest residential houses are four units located alongside the public road near the intersection of the access lane and the public road (2 on each side). The nearest house is approx. 0.66Km from the southern gable of the shed.
- 1.4. The surrounding area is in use as agricultural grazing lands, rural, remote and sparsely populated.

2.0 Proposed Development

2.1. Retention of:

- Agricultural building for use as an animal shelter (2466 sq. m to cater for 120 dogs and 80 equines)

Permission for:

- Extension (714 sq. m) to existing agricultural shed to be used as an animal shelter as part of the above.

- Stand-alone office and wc. (26.8 sq. m) and associated treatment unit / sand polishing filter.
- All associated site works.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Following a request for Further Information with respect to:

- (1) Effluent treatment system proposals
- (2) Clarification on the storage and disposal of horse manure and dog faeces.
Clarification on future use of the indoor arena area.
- (3) Dimensions, floor plans and elevation drawings of the shed (existing and proposed)
- (4) Explain the meaning of the red lines shown in the side elevation drawings, to label same with north south compass directions.
- (5) Confirm legal ownership of the lands and submit letter of consent as required.
- (6) Indicate the total maximum capacity for the facility, of all animal species to be housed.
- (7) Indicate the intention to the unauthorised exterior dog pen near the front door of the shed.
- (8) Provide details of the proposed disposal of surface water 'to Watercourse'.

3.1.2. Planning permission was granted subject to thirteen number conditions. Conditions area summarised as follows:

Schedule 2(a) Retention Permission

Condition 2 relates to disposal of waste

Condition 3 The burning or burial of waste is expressly prohibited at the facility.

Condition 4 External lighting shall be properly cowled and directed away from the public roadway, and shall not be visible from any point more than 100m away from the light.

Condition 5 The building shall be used for storage, dog and horse accommodation purposes only and not for any other commercial, habitation or agricultural uses.

Schedule 2(b) Permission for extension to the shed

Condition 6. Standard

Condition 7. (a) Proposed extension shall be in accordance with the design drawings received on the 06/10/2017 and revised on 09/05/2018. (b) All external finishes shall match those of the existing shed.

Condition 8. Within 3 months of the date of this decision, the unauthorised exterior dog pen to the south side of the existing shed shall be removed.

Condition 9. Within 3 months of the date of occupation of the new office structure, the unauthorised shipping container shall be removed from the site.

Condition 10. Within 9 months of the date of this grant of permission the development shall be provided with a packaged wastewater treatment unit sand polishing filter and finally a soil polishing filter in accordance with EPA code of Practice 'Waste water treatment and disposal systems serving single houses (p.e.<10)

Condition 11. Relates to certification of the wastewater treatment system

Condition 12. Relates to maintenance or service contract for the on-going maintenance of the packaged wastewater treatment unit.

Condition 13. The buildings shall be used for storage, dog and horse accommodation purposes only and not for any other commercial, habitation or agricultural uses. A maximum of 120 dogs and 80 horses shall be permitted on the site at any one time.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report: The planning report supports the draft decision to grant retention permission and grant planning permission. It is considered having regard to the existing pattern of development in the area and to any submissions received in relation to the application, that subject to condition the proposed

development would not be visually obtrusive or out of character with the existing pattern of development in the vicinity, would not seriously injure the amenities of properties in the vicinity or be otherwise contrary to the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports:

- Site Assessment Unit, Environment Department: Initially further information Requested, subsequent report indicates no objection subject to conditions.
- County Archaeologist: No Objection.
- Environment Department: Concerns regarding the management (storage and disposal) of horse waste and dog faeces generated at the facility. And clarification on future use of the indoor arena. Initially further information Requested, subsequent report indicates no objection subject to conditions.
- Fire Authority: Fire & Building Control Department recommend that planning permission is refused. However, should permission be granted advise that an application for a regularisation certificate is submitted to the Building Control Authority and a fire safety certificate for the proposed works.
- Inland Fisheries Ireland (IFI): Grant of permission should be contingent on the availability of effluent management facilities to ensure there would be no threat to surface or ground water quality.

3.2.3. Prescribed Bodies:

- None

3.3. Third Party Observations

A number of objections received concerns raised are similar in nature to those raised in the third-party appeal on file, summarised below.

4.0 Planning History

Reg. Ref. 16/1121 Application Withdrawn. Permission sought to retain the use of the agricultural building as built as an animal shelter, (2) permission for an extension to

the existing agricultural shed, to also be used as an animal shelter as part of the above, (3) permission for office and w/c and associated treatment unit / sand polishing filter and all associated site works.

Reg. Ref. 07/4192 Permission granted to construct a roofed dung stead, soil water tank, agricultural shed incorporating horse stables, hay / straw area and exercise arena and all associated ancillaries.

5.0 Policy Context

5.1. Development Plan

The site is governed by the policies and provisions contained in the Kerry County Development Plan 2015-2021. The site is located in an area zoned 'Rural General' which is detailed in section 3.3.2.1 of the Plan. 'These areas constitute the least sensitive landscapes through the county and from a visual impact point of view have the ability to absorb a moderate amount of development without significantly altering their character.'

The following sections of the Development Plan are of relevance:

Section 4.8.1 Agriculture

Section 10.2 Environmental Designations

Section 10.2.2 European Designations (Natura 2000 network)

Section 10.2.3 National Designations

Objective NE-11, Objective NE-12 and Objective NE-13

Chapter 12 Zoning and Landscape Protection

Objective ZL-1 Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people's lives.

Chapter 13 Sets out the Development Management considerations

Section 13.12 Agricultural Buildings

Section 12.4 Deals with Views and prospects

5.2. Natural Heritage Designations

The site is located approximate to the following sites:

- Special Protection Areas: Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (1.0 Km distant to the north)
- Natural Heritage Areas: Knockatarriv/Knockariddera Bogs NHA (2.4 Km distant)
- Natural Heritage Areas: Anna More Bog NHA (6.4Km distant)
- Special Area of Conservation: Ballyseedy Wood SAC (9 Km distant)
- Special Area of Conservation: Slieve Mish Mountains SAC (10 Km distant)
- Natural Heritage Areas: Mount Eagle Bogs NHA (10.7 Km distant)
- Special Protection Areas: Tralee Bay Complex SPA (14.3 Km distant)

5.3. Grounds of Appeal

Third Party Appeal Summarised as Follows:

- Failure of AHAR or its agents to provide adequate documentation and plans for removal of dog faeces from the property.
- The Whoopsie Away Unit proposed as the solution to dog waste is completely unsuitable given that there is no public sewer connection to flush the waste into.
- It is unsuitable for storage of large quantities of dog waste
- It is imperative that a suitable solution for disposal of dog waste be found.
- Failure by AHAR or its agents to provide adequate documentation and plans for the sealing of the arena area and associated / plumbing and drainage works to make it suitable for the routine, frequent and necessary disinfection of the arena area.
- Failure by AHAR or its agents to include plans and request permission for the replacement of the current pens constructed of builders fencing with proper kennels as required by the DBE Act Guidelines of 2011.

- Kennels should be separated from each other by a suitable barrier
- Floor of all kennels should be impervious
- Concerns of health and safety, hygiene, waste disposal, adequate staffing, animal care
- Failure by AHAR or its agents to provide the required Fire safety certification.
- Failure to provide plans for a waste water treatment system and sand polishing filter adequate for the number of people working at the property on a regular basis, plus visitors.

Appeal accompanied with:

- Excerpt from 'Environmental Contamination by Dog Faeces: A Public Health Problem'.
- Details of Whoopsie – Away, Dog disposal unit
- E.mail from appellant to environment section of KCC with respect to waste disposal from the facility.
- Dog Waste Calculations
- Copy of objection submitted to the planning authority.
- Copy of draft Grant of retention and grant of planning permission Reg. Ref. 17/989

5.4. Planning Authority Response

None Received.

5.5. First Party Response

None Received.

6.0 Assessment

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

- **Principle of Development**
- **Solid Waste Generation**
- **Wastewater Generation**
- **Implications for Groundwater and Surface Water**
- **Other Matters**
- **Environmental Impact Assessment (EIA)**
- **Appropriate Assessment (AA)**

6.1. Principle of Development

- 6.1.1. The appeal site is located in an area zoned 'Rural General' which is detailed in section 3.3.2.1 of the Kerry County Development Plan 2015-2021. It is stated: 'These areas constitute the least sensitive landscapes throughout the county and from a visual impact point of view have the ability to absorb a moderate amount of development without significantly altering their character.'
- 6.1.2. Section 4.8.1 Agriculture of the Kerry County Development Plan states that 'Agriculture is the second largest employer in the County, with 5,621 working in the Agriculture, Forestry and Fishing Sectors...it is an objective of the Council to support the sustainable development and diversification of the agricultural sector.'
- 6.1.3. I highlight section 13.12 of the Plan which relates to Agricultural Buildings, it requires that proximity to adjacent dwellings, the rural character of the area, utilisation of natural landscape and land cover as screening, waste management in terms of storage and disposal and environmental carrying capacity shall be taken into account in all proposals for new agricultural buildings. Policy ES-28 reinforces this and requires that proposals for any economic development in rural areas must demonstrate compliance with the development standards of the plan, no adverse

impact on the residential amenity of nearby residents, particularly in relation to noise, traffic, air quality odours or vermin, no adverse impact on the environment incl. the integrity of Natura 2000 network. Impacts upon water quality, the existing road network, bio-diversity and visual impact shall also be taken into account.

- 6.1.4. The appeal site comprises 0.78 ha of an overall landholding at this location of some 2.5 ha. The proposal is for retention of an agricultural shed for use as an animal shelter and permission to extend the shed and to provide an office and w.c. and associated treatment unit and sand polishing filter. The lands presently in use as pasturelands are sparsely populated, rural and remote. The shed is located 0.72 Km from the nearest public road and is accessed via a long gravel track. The closest habitable dwelling is located 0.66Km distant. I consider the principle of locating an animal shelter within a sparsely populated rural area to be acceptable. This facility provides a necessary service within the county. I consider this type of location for an animal shelter to be more preferable than in more populated areas. Indeed, I would be of the view that one of the most important criteria with the location of such a facility would be that noise disturbance can be minimised.
- 6.1.5. Such development is consistent with the pattern of development in the area, and is broadly supported by the policies of the development plan, subject to the preservation of landscape amenity, including residential amenities in the vicinity.
- 6.1.6. Subject to condition, restricting the use to that set out in the application, I am of the opinion the proposal is acceptable in this zoned 'rural general' and working agricultural area.

6.2. **Solid Waste Generation**

- 6.2.1. Ground Floor Plan, Drg. No. 10612016-01 sets out proposed 150mm C30 concrete slab, laid to falls, 2 layers of A142 mesh on suitable fill for the horse manure storage area / dog storage area and the feed / baled silage storage area, located to the rear / north of the agricultural shed. The floor of the arena area / shed itself is indicated as concrete slab (same as above), laid to falls, 2 layers of A142 mesh on suitable fill.
- 6.2.2. Concern is expressed that the waste generated on site can be adequately stored and or disposed of and it is submitted that a Whoopsie Away Unit / system proposed is an unacceptable solution to dog waste disposal.

- 6.2.3. I note the Environment Section report on file which sets out that the S.E.E has visited the site on a 'few occasions'. It is notable that the Environment Section do not object to a grant of planning permission, subject to condition. The Whoopsie Away Unit / system may, I consider, be used in tandem with suitable storage receptacles on site, and the use of a suitably authorised waste facility and licensed waste collector. Waste / faces storage and disposal can be dealt with by way of condition.
- 6.2.4. Condition number 2 of the notification of decision to grant planning permission is significant in terms of solid waste disposal. I note it requires that all horse and bovine related waste generated on site shall be stored and disposed of in a manner that prevents its run-off or seepage, directly or indirectly, into groundwater or surface waters. It also requires that dog faces shall be stored separately from horse / bovine wastes and that dog faces shall be disposed of in line with the relevant environmental, legislation and guidance documents. Draft condition 2 (Reg. Ref. 17/989) goes on to state that all hazardous waste generated at the facility shall be stored in suitable receptacles onsite and taken directly to a suitably authorised waste facility or transferred to a suitably licensed hazardous waste collector. I agree that it is appropriate that a condition be attached to any grant of planning permission requiring that all solid waste generated on site be removed by a licensed contractor. I recommend that Condition 2 or a similar condition to draft condition 2 be attached to any decision to grant planning permission forthcoming from the Board.
- 6.2.5. I highlight that draft C3 of Reg. Ref. 17/989 sets out that the burning or burial of waste is expressly prohibited at the facility. Again, I consider that such a condition is reasonable and enforceable and therefore recommend that this condition be attached to any decision to grant planning permission forthcoming from the Board.

6.3. **Wastewater Generation**

- 6.3.1. It is proposed to treat domestic effluent generated on site by way of a wastewater treatment system and sand polishing filter. The site has been the subject of a comprehensive site suitability assessment and the applicant has demonstrated that the site is suitable for packaged wastewater treatment systems and a sand polishing filter. The system to be installed has the capacity for treating effluent for 2 number employees and 5 number volunteers to a polishing filter and discharge to ground

water. There is ample room on the site to accommodate the polishing filter/percolation area. I have no concerns in this regard subject to condition compliance and monitoring.

- 6.3.2. Third party concern is expressed that the floor of all kennels is not impervious and therefore wash waters for infection control purposes is not taken into account in the application.
- 6.3.3. Albeit that the floor plans submitted indicate a concrete floor to the arena area, I consider that the concern of disinfection raised by the appellant is legitimate and I recommend that a specific condition be attached; requiring that, prior to commencement of any development a system be put in place to collect and dispose of wash down waters and urine to the satisfaction of the planning authority. Such wastewater should be collected in a secure tank which would be emptied when required by a licensed contractor. Subject to condition and compliance I have no reason to believe that the waste water generated will present an environmental threat to either surface water or groundwater in the area. I consider this matter can be adequately addressed by way of condition.

6.4. Implications for Groundwater and Surface Water

- 6.4.1. A significant concern raised in the grounds of appeal relates to the potential contamination of surface water and groundwater as a result of solid waste and wastewater generated. I note the third-party argument raised that the applicant has not submitted plans for the sealing of the arena area and associated plumbing and drainage works to make it suitable for the routine, frequent and necessary disinfection of the area. The floor plans submitted indicate a concrete floor to the arena area, the Environment Section of the planning authority have raised no concern in this regard. In the interest of public health and to ensure a proper standard of development. I recommend that a maintenance contract for all wastewater treatment systems on site shall be entered into and kept in place at all times. Subject to condition and compliance I have no reason to believe that the waste generated will present an environmental threat to either surface water or groundwater in the area.

6.4.2. I note that in similar precedent cases dealt with by the Board it is has been borne in mind that livestock populate fields throughout the countryside and during the summer months this waste is not collected by a licenced contractor. Thus the arrangements to be put in place within the animal shelter is much less likely to give rise to pollution than normal livestock rearing.

6.5. Other Matters

6.5.1. The matter of fire risk has been raised by the third party. Fire safety and compliance with building regulations is governed separately under the Building Control Regulations, 1997, S.I. No. 496 of 1997.

6.6. Environmental Impact Assessment (EIA)

6.6.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.7. Appropriate Assessment (AA)

6.7.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest 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 individually or in combination with other plans or projects on a European Site.

7.0 Recommendation

7.1.1. I recommend that the decision of the planning authority be upheld and planning permission be Granted to the proposed development.

8.0 Reasons and Considerations

8.1.1. Having regard to the rural location of the site, the low density of residential development within the vicinity and the separation distances between the subject site

and established residences together with proposals being put in place to dispose of solid waste and waste water, it is considered that subject to conditions set out below the proposed development would represent an acceptable use at this location and would not seriously injure the amenities of the area and would generally be acceptable in terms of public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1. The development shall be retained, 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 09.05. 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 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. All external finishes shall match those of the existing shed.

Reason: In the interest of visual amenity of the area.

3. Within 3 months of the date of this decision, the unauthorised exterior dog pen to the south side of the existing shed shall be removed.

Reason: To regulate and control the layout of the development.

4. Within 3 months of the date of occupation of the new office structure, the unauthorised shipping container and the large mobile home shall be removed from the site.

Reason: To regulate and control the layout of the development.

5. The number of dogs, present on the overall site at any given time shall not exceed 120 and the number of equines shall not exceed 80. A readily readable register of all dogs and equines present shall be maintained and shall be available for inspection by the planning authority during normal working hours.

Reason: In the interest of clarity and orderly development.

6. (a) All horse and bovine related wastes; including horse / bovine manure, effluent, soiled water and waste bedding generated on site shall be stored in a manner that prevents its run-off or seepage, directly or indirectly, into groundwater or surface waters. These substances shall be collected, stored and land spread in line with the European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2017 or any future revisions of these regulations.

(b) All dog faces shall be stored separately from horse / bovine wastes. Dog faces shall be disposed of in line with relevant environmental legislation and guidance documents.

(c) There shall be no discharge of polluting matter to any watercourses.

(d) All non-hazardous waste generated at the facility shall be stored in suitable receptacles onsite and taken directly to a suitable authorised waste facility or transferred to a suitably licensed waste collector.

(e) All hazardous waste generated at the facility shall be stored in suitable receptacles onsite and taken directly to a suitably authorised waste facility or transferred to a suitably licensed hazardous waste collector.

(f) The waste / faces storage facilities / areas to the rear of the shed shall be completed within 6 months of the date of this grant of planning permission.

Reason: In the Interest of public health and to prevent pollution.

7. Water supply and drainage arrangements for the site, including the 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.

8. The burning or burial of waste is expressly prohibited at the facility.

Reason: In the Interest of public health and to prevent pollution.

9. Prior to the commencement of development, the applicant shall agree in writing with the planning authority, details of the proposed storage tank to accommodate wastewater discharge and wash waters from the shed. Such wastewater shall be collected in a sealed secure tank of appropriate volume not less than 7 cubic metres. All effluent stored in the tank shall be collected and appropriately disposed of by a licensed contractor in accordance with the requirements of the planning authority.

Reason: In the interest of public health and to ensure a proper standard of development.

10. Any external lighting shall be properly cowled and directed away from the public roadway. It shall also not be visible from any point more than 100m away from the light.

Reason: In the interest of traffic safety and to control light pollution in the rural environment.

11.

- (a) Within 9 months of the date of this grant of planning permission the development shall be provided with a packaged wastewater treatment unit a sand polishing filter and a soil polishing filter.
- (b) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 09.05.2018, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). No system other than the type proposed in the submission shall be installed unless agreed in writing with the planning authority.
- (c) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- (d) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwelling house and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (e) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.
- (f) Within three months of the first operation of the office, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

12. Maintenance contract for all wastewater treatment systems on site shall be entered into and kept in place at all times. Signed and dated copies of the maintenance contract shall be submitted to the planning authority on an annual basis.

Reason: In the interest of public health and to ensure a proper standard of development.

13. Visual examination of the surface water drainage system shall be carried out weekly. A log of such inspections shall be maintained.

Reason: In the interest of public health.

Fiona Fair
Planning Inspector
10.01.2019