



An
Bord
Pleanála

Inspector's Report ABP-302024-18

Development	Retain and complete existing agricultural farm buildings which incorporates machinery/feed storage, slatted shed incorporated within the building along with ancillary site works
Location	Carrowliambeg, Killasser, Swinford, Co Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	17793
Applicant(s)	Joe Howley
Type of Application	Retention and completion
Planning Authority Decision	
Type of Appeal	Third Party
Appellant(s)	Gabriel Howley
Observer(s)	None
Date of Site Inspection	26/11/18
Inspector	John Desmond

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1.0 Site Location and Description

- 1.1. The application site is located in northeast County Mayo, in a deeply rural location, c.6km north of Swinford and c.27km northeast of Castlebar. The site is located to the rear of a one-off type dwelling (indicated as within the control of the applicant), within a row of similar dwellings lining the northern side of the local road. The subject shed structure is located c.24m from the existing dwelling on site and a similar distance from the dwelling on the neighbouring site to the east, but the footprint of the proposed development almost abuts the site's east boundary with the said neighbouring residential property. Site is accessed from the public road shared with the dwelling house.
- 1.2. The site has a stated area of 0.191ha and median dimensions of c.42.6m north/south and c.44m west/east, accommodates 1no. single-storey height stone shed with recent additions on the east side of the farmyard, and 1no. double-height steel shed on the west side of the farmyard. The site appears slightly elevated above the public road to the south, but the lands slopes downwards to the north.

2.0 Proposed Development

2.1. Summary description

It is proposed to **RETAIN** and **COMPLETE** an existing agricultural farm building, incorporating machinery / feed storage and a slatted shed, in addition to ancillary works.

2.2. Supporting documentation

Cover letter prepared by Ambrose Lavin Architectural & Surveying Services

Nutrient Management Plan from Teagasc

Land Registry folio map

2.3. Further information

Cover letter prepared by Ambrose Lavin Architectural & Surveying Services

Report of structural engineers (SDS Design Engineers) regarding integrity of building and slatted tank.

3.0 Planning Authority Decision

3.1. Decision

To **GRANT** (15/06/18) permission subject to 10no. generally standard-type conditions. Condition no.2 is of note and requires:

- 18 weeks tank storage capacity;
- Collection and storage of soiled water in accordance with European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014 (S.I. No.31 of 2014);
- All agricultural buildings / structures shall be designed and constructed in accordance with DAFM building specification;

Reason: in the interest of public health and to avoid pollution.

The Planning Authority sought **FURTHER INFORMATION** (18/12/17) on 4no. points concerning (1) soiled water, banded chemical/oil storage, collection / storage of tyres and farm plastics, and silage storage; (2) integrity of existing structure; (3) site layout plan to include arrangements for disposal of uncontaminated surface water and contaminated soiled water; (4) site layout plan indicating entire effluent treatment system for immediately adjoining dwellinghouses to south / southeast.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **final report** (13/06/18) of the planning officer is consistent with the decision of the planning authority to grant permission and with the conditions attached thereto. In particular, the planning officer was satisfied that the applicant had legal entitlement to carry out the proposed works and, based on the engineer's report, the structure integrity of the development will not be of significant concern on completion.

3.2.2. Other Technical Reports

Architect's Report (26/10/17) raised no objection but recommended that a minimum of 8no. native deciduous semi-mature trees (minimum girth of 30cm) be planted in front / side garden, with native hedging at all boundaries.

3.3. Third Party Observations

2no. letters of objection were received Gabriel Howley (12/06/18 and 08/11/17), owner / occupier of adjacent residential property to the east. The main points raised are repeated in the grounds of appeal and are summarised below. Additional points include:

- No public water supply in the area. Water supplied by group water scheme. Is connection authorised by the GWS?
- Concern about potential structural collapse of the structure.

4.0 Planning History

Reg.ref.05/2752: Permission **GRANTED** (01/02/06) to Joseph Howley to **RETAIN** dwellinghouse and revised boundaries on the neighbouring land to the southeast. No drawings or details available online.

5.0 Policy Context

5.1. Development Plan

Mayo County Development Plan 2014-2020
Objective AG-01
(Vol.2) S.29.3 and S.59.2

5.2. Other relevant reference documents

Minimum Specification for Bovine Livestock Units and Reinforced Tanks (DAFM, September 2017)

5.3. Natural Heritage Designations

River Moy SAC (site code 002298) c.1.4km to the southeast.

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of the appeal may be summarised as follows:

- Fundamental differences between the submitted plans and the elements as built, most critically in relation to the slatted tank.
- The construction of the slatted tank is indicated as to be '*carried out in compliance with Department of Agriculture guidelines*' (S 123, 2015), which is totally misleading and at variance with what has been built, being a block-built tank rather than a reinforced concrete tank specified by the department, and different from that shown in plan.
- Concern that the site is contaminated with lead-based paint hazard due to the age of the building, supported by the death of three cattle of suspected lead poisoning.
- Proximity to appellant's back garden and children's play area – a noisy, smelly, noxious nuisance that will adversely affect its residential amenities.
- The Engineer's report found no evidence of cracks or leakage yet, but the stock numbers comprised only 1 no. suckler cow at that time, which would not test the structure. It is inevitable that the blockwork (that are not adequately protected by the plaster coating), with very high limestone content, will come into contact with slurry, resulting in cracked, crumbling walls, escape of slurry to ground and eventual wall collapse (reduces efficacy by a factor of >10).
- The Engineer's report confirms that standards S 123 have clearly not been met. The developer has argued that S 123 does not apply as the tank was built prior to 2017. S 123 should apply as the tank was built after an enforcement warning notice issued 3/11/15.

- Conflict with condition no.2 of permission which requires design and construction to be compliant the departmental building specifications.
- The purpose of a slurry tank is to collect and store farmyard slurry until it can be safely spread on land, necessitating agitation of the slurry by heavy machinery before loading to a bulk tanker for transportation and spreading. The Engineer's report indicates that the tank walls are at risk of collapse from the loading of large machinery if it drives close to the tank, rendering it unfit for purpose and a safety hazard.
- There is no documentary evidence that the applicant owns this land – no proof of ownership of folio no.MY28780F.
- Granting permission would encourage others to flout the law.
- Change of use of the site and structure from summertime equine to year-round bovine.
- Too close to appellant's dwelling – adverse impact on residential amenities from noise and smells, shadow-cast on back garden, with safety risk from unsuitable and unsafe structure.
- The Engineer's report refers to the structure as a hay shed and the drawings refer to it as a hay storage shed. This disguises the purposes of the structure to house additional cattle. There is adequate hay storage on site already. To gain access animals must transit via the area labelled hay storage which is incredible and would cause respiratory diseases in the animals.
- Negative impact on appellant's septic tank, within 6.48m of the building, with percolation area / soak-pit much closer. Flooding of area results from runoff from roof of structure, creating a swamp and causing septic tank to back up to the manholes in the footpath and resulting in a health hazard. The said roof has been subject of an enforcement notice the nearly 2 years requiring the roof to be removed.
- The septic tank next door is located 80-90ft due west of the appellant's septic tank, which is not shown accurately relative to boundaries and neighbouring septic tanks, etc., and the indicated location of the soak pit is questioned as it is in the site of an old farm building, and to locate a soak pit here would be

very wrong between two septic tanks and in an area of saturated ground and in or around an area where heavy traffic would have to travel to gain access to the shed. This would attract vermin.

6.2. Planning Authority Response

The main points of the response of the planning authority (31/07/18) may be summarised as follow:

Land ownership (land registry maps appended) -

- The shed subject of the application would appear to be on lands wholly within the ownership of the applicant, Joe Howley, within folio 3841F from folio MY14906.
- The redline site boundary traverses folio MY28780F (owned by Celia Howley) but no development is taking place within that area.
- The planning authority is satisfied that the applicant has established sufficient legal entitlement to carry out the works identified.
- S.5.13 of the Development Management Guidelines provides that the planning authority is not required to inquire further into the matter of land ownership where the applicant asserts that they are the owner and there is nothing to cast doubt on the bona fides of that assertion.

Other issues

- Having regard to the planner's reports (12/06/18 & 30/11/17), the established agricultural use on site and the rural location within the Ballina Municipal Region, the proposed development is considered to be in accordance with the Mayo CDP 2014-2020 and the proper planning and sustainable development of the area.

6.3. Applicant Response

The main points of the response of the applicant (07/08/18) may be summarised as follow:

- This is a family issue – the appellant is the applicant’s brother.
- The neighbouring back garden is agricultural land used for grazing pigs and ponies, with a pig house, and is not a family amenity area (supporting photos attached), and with animals grazed closer to the appellant’s own house than the development.
- Refutes that the development would be noisy and a smelly nuisance.
- The engineer’s report was produced by a very reputable firm of structural engineers and all blocks and materials are manufactured to a quality standard.
- The tank was built prior to 2017, to a similar structure of many others constructed in the county with no problems or negative issues.
- Refutes the allegation that the tank was built after the warning notice as the dates and times are incorrect.
- Tractor and agitator would not be considered large machinery and the slurry tanker would not be immediate to the tank. The agitation point is at the northern side of the building, being the only point where agitating and loading of tanker will occur.
- It is a totally incorrect statement that all machinery will enter by the front entrance only.
- The applicant is satisfied that he has ownership of the said lands and buildings, with letters of consent / authorisation from his siblings (letter of no objection signed by Mary Keavney and Margaret Hardesty) and there is no issue regarding ownership and access from any other source.
- There are block built tanks working satisfactorily for in excess of 35 years.

- All farm numbers fluctuate during the year and farm animals, cattle, horses, etc., have been kept on this farm on a 12-month basis for decades, so there is no significant change.
- The area has always been an established farm yard and the development will greatly enhance the environment and surrounding area.
- The proposed building is a hay shed / store and machinery shed to facilitate convenience for the applicant and his animals.
- Cattle will enter the northern side of the development.
- The hay does not have huge amounts of pollen and dust and can be stored in the shed without risks to man and animals.
- The name of the objector does not correspond with the signature on the planning appeal form / checklist.
- The appellant is correct in stating three animals have died on the applicant's farm in the very recent past, which is under investigation by An Garda Síochána.
- Carrabeg stud has no bearing on any description of this development.

7.0 Assessment

The main issues arising in this case may be assessed under the following headings:

7.1 Policy / principle

7.2 Development standards

7.3 Residential amenities

7.4 Land ownership

7.5 EIA Screening

7.6 AA Screening

7.1. Policy / principle

- 7.1.1. The site is located in a rural area outside of any town, village or other defined settlement, however there is a relatively high level of one-off housing distributed along the local road network and the site of the proposed development abuts a neighbouring residential property.
- 7.1.2. The core strategy identifies the location as structurally weak which is to be developed in a sustainable manner to facilitate rural or resource dependent activities such as agriculture. It is an objective (AG-01) of the Council to support the sustainable development of agriculture, with emphasis on local food supply and agricultural diversification where it can be demonstrated that the development will not have significant adverse effects on the environment, including the integrity of the Natura 2000 network, residential amenity or visual amenity.
- 7.1.3. The County's Planning Guidance and Standards (Vol.2 of the CDP), s.29.3 provides that *'rural enterprises such as agriculture ... shall be considered in all rural areas subject to no adverse impacts (e.g. noise, odour, dust, light pollution and traffic) on neighbouring properties and the environment including visual amenity. S.56.2 'The principal aim shall be to support agriculture in the County subject to best environmental standards which promote maintaining good water quality and biodiversity.'* The principle of the development of agricultural farm buildings is generally acceptable.

7.2. Development standards

- 7.2.1. S.56.2 of Vol.2 of the Development Plan require that *'activities on the farm shall comply with the provisions of S.I. No. 610 of 2010, European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2010.'* These regulations were revoked and replaced by S.I. No.31 of 2014, subsequently revoked and replaced on 1 January 2018 by Regulations of 2017, S.I. 605 of 2017, *European Union (Good Agricultural Practice for Protection of Waters) Regulations*. It is a requirement under section 7(2) that

Storage facilities being provided on a holding on or after 31 March 2009 shall —

(a) be designed, sited, constructed, maintained and managed so as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water of a substance specified in sub-article (1), and

(b) comply with such construction specifications for those facilities as may be approved from time to time by the Minister for Agriculture, Food and the Marine.

- 7.2.2. Condition no.2 attaching to the planning authority's decision requires the collection and storage of soiled waters to comply with the Regulations of 2014, in addition to all structures to be designed and constructed in accordance with DAFM building specifications. The Regulations of 2017 were the appropriate regulations to apply at the time of the decision.
- 7.2.3. The appellant claims that the slatted tank does not comply with current standards for such development, *S.123 Minimum Specifications for Bovine Livestock Units and Reinforced Tanks* (DAFM, September 2017) which, he claims, should apply as the slatted tank was constructed after the issuing of a Warning Notice on 03/11/15. The applicant has responded that the tank was built prior to 2017 and is similar other structures built in the county with no problems or negative issues and refutes the appellant's allegation that the tank was built after the warning notice. Based on the date of the Warning Letter (Ref.PE111/15) it can reasonable be assumed that the construction of the structures commenced post 31 March 2009. The application for retention and completion of the subject structures was made on 10 October 2017, after the issuing of the Departmental specifications for such structures and I am therefore satisfied that the structures are obliged to comply with same.
- 7.2.4. Although the capacity of the tank would appear, based on the Teagasc advisory report to the applicant (03/03/17), to meet the standard for 18 week storage, it is apparent that the structure would be non-compliant in respect of at least two requirements – the tank would not extend at least 1.2m beyond the end of the proposed building necessary to provide sufficient length to install an external agitation point; and the tank is not constructed using full concrete reinforcement specifications, but of non-reinforced concrete block walls on a reinforced concrete base.

- 7.2.5. That the construction may pose a risk to human safety is suggested by the applicant's own engineer's report (31/05/18), which notes that although the walls are capable of supporting the lateral load from the backfilled material, they may not support the load imposed by large farm machinery driving too close to those walls. The report does not define '*large farm machinery*', but I would disagree with the applicant's assertion that an agricultural tractor falls outside the scope of same. The report does not define '*too close*', but it is my understanding that slurry tanks are agitated by tractor-mounted machinery necessitating the tractor to park directly adjacent to the tank.
- 7.2.6. Whilst the engineers report found no current evidence of cracks or leaking, that the structure has not been built to DAFM specification and that the engineer's report highlights a significant structural issue, must raise significant concern over the integrity of the tank. Should the tank's integrity be compromised there would be implications for groundwater, potentially affecting the local water supply (Killasser GWS) and potentially surface waters downslope to the north (nearest SW drain appears to c.80m to the north) and / or sensitive environmental receptors in the vicinity (European sites).
- 7.2.7. I am satisfied based on the information available to me that the slurry tank structure does not comply with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 and with the DAFM specifications for such structures, due to the nature of its construction, would endanger the health or safety of persons employed in the structure through its potential for collapse, and be prejudicial to public health and pose a risk to sensitive environmental receptors through potential for pollution of ground waters and possibly surface waters through failure of integrity of the tank.

7.3. Residential amenities

- 7.3.1. The appellant claims the proposed development will adversely affect his onsite WWTS located on the adjoining site to the east, which is submitted to be within 6.48m of the appellant's septic tank and much closer to the percolation area. I am not aware of the planning history of the neighbouring property and its WWTS. Separation distances from site boundaries have applied to WWTS since the adoption of NSAI Irish Standard SR6 1975, including a minimum 3m separation distance from

any site boundary. The proposed development does not entail any amendments to the boundaries between the sites, and the proposed development provides for surface water runoff from the building to be collected and discharged to an existing soakpit on the opposite side (to the west) of the subject development to the neighbouring WWTS to the east. Therefore, there is no reason to expect the subject development would adversely affect the operation of the appellant's WWTS.

7.3.2. The proposed shed structure is located very close (maybe 0.5m at the nearest point; the slurry tanks is setback a further 3m) to the boundary with the neighbouring property, owned by the third-party appellant, the applicant's brother, and within c.24m of the appellant's dwellinghouse and c.39m of another dwellinghouse to the east.

7.3.3. As noted above, s.29.3 of the Development Plan (Vo.2) provides that '*rural enterprises such as agriculture ... shall be considered in all rural areas subject to no adverse impacts (e.g. noise, odour, dust, light pollution and traffic) on neighbouring properties and the environment including visual amenity.*' It would be impossible for the proposed development to have no adverse impact on the neighbouring properties given its location and the nature of the use. There will be noise from cattle lowing and odour of cattle effluent from within the tank, which will be moderated to some degree by the shed structure proposed to be completed, although the proposed use of vented agri-clad sheeting would allow noise and odour to escape in the direction of neighbouring properties. The structure would impact on visual amenity of the neighbouring properties given its size and location.

7.3.4. However, I consider the requirements of s.29.3 to be unreasonable given that the primary land use in this deeply rural area is agricultural. The Board should consider only whether the proposed structure would have significantly adverse impacts on neighbouring properties. The cattle housing and slatted shed is located at the northern end of the development, achieving a separation distance of at least 40m from the appellant's residence and c.50m from the other dwelling to the east, reducing the potential for significant adverse impacts on residential amenities from noise and odour (note, this compares to 100m under Class 6, Exempted Development – Part 3). I do not consider the likely impact to be excessive given the site's rural location. I do not consider that the visual impact would be significantly adverse within its rural context, although in the event the Board decides to grant

permission, it may consider attaching a condition requiring planting along the eastern and southern boundaries adjacent the shed structure similar to that recommended by the Council's Architect's report.

- 7.3.5. Whilst there is scope to provide a similar development on this landholding that would avoid any appreciable impacts on neighbouring residential properties, such as locating it to the west of the site, it is not unreasonable for the applicant to make use of the existing old farmyard buildings in the proposed development. On balance I do not consider the proposed development would significantly adversely affect the residential amenities of neighbouring property in the vicinity.

7.4. Land ownership

- 7.4.1. The applicant indicated on the application form that he is the owner of the land concerned and submitted land registry folio details. This has been disputed by the appellant, who submits that there is no proof of the applicant's ownership of folio no.MY28780F.
- 7.4.2. In response to the appeal the applicant submitted that he is satisfied that he has ownership of the said lands and building and refers to letters of consent / authorisation from his siblings submitted on file. However, the only letters submitted are letters of no objection signed by Mary Keavney and Margaret Hardesty, which are not letters of consent to make the application and, moreover, there is no evidence that these two individuals are the relevant landowners. There is no letter of consent from Celia Howley.
- 7.4.3. In response to the appeal, the planning authority submitted copies of relevant land registry folios and noted that although the site boundary traverse folio MY28780F in the ownership of Celia Howley, no development is taking place in that location and the shed subject of the application appears to be wholly within the ownership of the applicant under folio no.3841F, and therefore the planning authority was satisfied that the applicant has established sufficient legal control to carry out the works identified. Accordingly, with reference to S.5.13 of the Development Management Guidelines, the planning authority considered it is not required to inquire into the matter further.

- 7.4.4. Section 5.13. of the Development Management Guidelines indicate that a planning applicant who is not the legal owner of the land or structure in question is required under the Planning and Development Regulations, 2001, as amended, to submit a letter of consent from the owner to make the planning application, otherwise the application must be invalidated. It suggests that the planning authority may accept the applicant's assertion of landownership unless doubts are raised by third parties or otherwise, in which case they can be addressed through a further information request. Whilst permission may be refused where it is clear from the response that the applicant does not have sufficient legal interest, the Board may grant permission notwithstanding that some doubt remains on the issue but should refer to the provisions of section 34(13) of the Act which provides that a person is not be entitled solely by reason of a permission to carry out any development.
- 7.4.5. I consider there to be some uncertainty as to whether the applicant has sufficient control over the application site to carry out the full extent of works proposed within the application site, or to make an application on the site as delineated in red. However, the Board may decide to grant permission subject to attachment of a note alerting the applicant to the provisions of section 34(13) of the Act.

7.5. **EIA Screening**

- 7.5.1. The application is for an installation for keeping cattle and for storing hay, feed, etc. It is not a class of development for the purposes of Part 10. EIA is not required.

7.6. **AA Screening**

- 7.6.1. The proposed development is within c.1.4km of the Moy River SAC (site code 002298) and the site may be considered hydrologically connected thereto via land drains connecting to a tributary of the River Moy to the north, over a distance of c.2.6km.
- 7.6.2. The conservation objectives of the European site include '*to maintain the favourable conservation condition of*' white-clawed crayfish, sea lamprey, brook lamprey, salmon, otter, alluvial forests with *alnus glutinosa* and *fraxinus excelsior* (priority habitat), old sessile oak woods with *ilex* and *blechnum* in the British Isles and alkaline fens, and '*to restore the favourable conservation condition*' active raised

bogs, degraded raised bogs still capable of natural regeneration and depressions on peat substrates of the Rhynchosporion.

- 7.6.3. The development is located outside of and at a distance to the European site. The development carried out and proposed to be completed is not related to the management of a European site. There is no potential for direct effects on habitats within the SAC. The potential for indirect effects on the integrity of the European site, having regard to its conservation objectives pertaining to animals species within the SAC cannot be ruled out due to the potential for pollution of ground and surface waters arising from the slurry pit which is not compliant with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 or with the DAFM (2017) specifications for such structures.
- 7.6.4. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European site no.002298, in view of the site's conservation objectives. In such circumstances the Board is precluded from granting permission.

8.0 Recommendation

- 8.1. I recommend that permission be **REFUSED** for the retention and completion of the subject development for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The slurry tank structure erected on site, by reason of its design and layout and the nature of its construction, does not comply with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 and with *S.123 Minimum Specifications for Bovine Livestock Units and Reinforced Tanks* (DAFM, September 2017). The development proposed for retention and completion would therefore endanger the health or safety of persons employed in the structure through potential collapse of the slurry tank structure and be prejudicial to public

health through the potential for pollution of ground water used for human consumption (Killasser Group Water Scheme) through potential for failure of the integrity of the slurry tank.

2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on River Moy SAC site no.002298, in view of the site's conservation objectives. In such circumstances the Board is precluded from granting permission.

John Desmond
Senior Planning Inspector

17th January 2019