



An
Bord
Pleanála

Inspector's Report ABP-302041-18

Development

1) Use a portion of his field for private flying of single engine light aircraft, (2) Construct a farm shed which will also be used for storing single engine light aircraft and other assorted domestic and farming property.

Location

Lis cahane East, Ardfert, County Kerry.

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

17/650

Applicant(s)

James McErlan.

Type of Application

Permission

Planning Authority Decision

Grant Permission.

Type of Appeal

Third Party

Appellant(s)

Ann Kelly and others

Observer(s)

None.

Date of Site Inspection

22nd November 2018

Inspector

Fiona Fair.

1.0 Site Location and Description

- 1.1. The appeal site is located approx. 2.5 Km south-east of Ardfert village, 5.2 Km north of Tralee Town in County Kerry. The R551 Ardfert to Tralee route is located to the west of the site. It is accessed via a cul de sac road leading from the west side of the site.
- 1.2. The site comprises open pasture lands and is rural in nature. The area is dotted with one off dwellings some five located on the opposite side of the local access road to the south east of the appeal site and one located to the west of the field boundary of which the appeal site forms part. There is an unnamed stream running to the northern appeal site boundary this stream flows into the Barrow West Bay (west Coastline) some 4 Km to the west.
- 1.3. There is an existing shipping container, shed and hard standing / tarmacadam area located on the north-eastern portion of the site. There is a high timber fence and secure gates erected at the access to the field with a hardcore driveway running from the entrance along the eastern field boundary to the storage and hardstanding area.

2.0 Proposed Development

- 2.1. The proposal comprises permission to:

- 1) Use a portion of a field for private flying of single engine light aircraft,
- (2) Construct a farm shed which will also be used for storing single engine light aircraft and other assorted domestic and farming property.

It is proposed to establish a facility for flying light aircraft on an existing grass field measuring circa 0.286 Ha and to construct a shed measuring 288 sq. m on a site measuring 0.1338 Ha. The shed is stated to be for the storage of light aircraft, as well as 'farming and domestic property'.

3.0 Planning Authority Decision

3.1. Decision

Subject to Further Information being requested with respect to 1. Entire site outlined in red, 2. Indicate the airfield traffic pattern (approach and take off zones in all directions). The map should cover a distance of 2 Km from the edge of the proposed field, and should indicate zones or arcs of noise and visual impact beneath the patterns, as well as residential property located within those zones. 3. To provide scaled cross-section drawings indicating the airfield traffic pattern (approach and take-off) in terms of altitude and flying angle. The map should cover a distance of 500m out from the edge of the proposed airfield. 4. Provide comprehensive and detailed information concerning the proposed airstrip facility incl. type and nature of air craft, noise levels, intensity of use, hours and days of use. 5. Provide a map indicating total landholding outlined in blue in the area of the site subject of this application 6. Provide comprehensive and detailed information concerning the proposed 'agricultural shed' incl: Why the shed is referred to as agricultural, what agricultural property will be stored in the proposed shed, what farm activities and farm landholding is the agricultural property associated with, what personal property will be stored in the shed, what is the intention with respect to the existing storage container on the site and how does it relate to the proposed shed.

Permission was Granted subject to 7 number conditions, summarised as follows:

C1. Standard condition

C2. Development contribution of €155.80 in respect of public infrastructure, in accordance with Section 48

C3. The use of the proposed airstrip shall be for the private, non – commercial operation of a single, private Microlight aircraft in the ownership of the applicant of the type described in the information submitted on 22/05/2018. Apart from the storage of a second aircraft, no more than one such aircraft may use or be operated at the facility or site at any one time.

C4. The use of the subject site as an airstrip shall cease on or before the expiration of a period of five (5) years from the date of this decision.

C5. The proposed shed shall be located and constructed in accordance with drawings and details received on 07/07/2017

C6. All proposed external materials and finishes to the proposed shed shall be muted natural tones of dark green or dark grey.

C7. The proposed shed shall be used for private storage or agricultural purposes only and not for any commercial or habitation uses.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planners Report sets out that subject to compliance with conditions set out in the Second Schedule, the proposed development would not be visually obtrusive, would not seriously injure the amenities of the area or be otherwise contrary to the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports:

None received.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

The Planners report sets out that 6 valid submissions have been received. The issues raised are similar to those raised in the third-party appeal summarised in detail below.

4.0 Planning History

4.1.1. None of relevance

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is governed by the policies and provisions contained in the Kerry County Development Plan 2015-2021.
- 5.1.2. The site is located in an area zoned 'Rural General' which is detailed in section 3.3.2.1 of the Plan. The following sections of the Development Plan are of relevance:
- 5.1.3. The following sections of the Development Plan are of relevance:

Chapter 3, Section 3.3 sets out Rural Development Policies.

Section 4.8.1 Agriculture

Section 10.2 Environmental Designations

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

Chapter 12 Zoning and Landscape Protection

Policy relating to areas zoned Rural General in section 12.3.1 Rural (c) states that: 'It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.'

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

ZL-4 'Regulate residential development in Rural Areas in accordance with the zoned designation of that area and the policies outlined in the Rural Settlement Strategy set out in Section 3.3 of this Plan.'

Section 12.4 Deals with Views and prospects

Chapter 13 Sets out the Development Management considerations

Section 13.12 Agricultural Buildings

5.2. Natural Heritage Designations

- 5.2.1. The site is located within 15 Km of the proposed site;
- Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Area of Conservation (SPA)
 - Tralee Bay Complex SPA

- Tralee Bay and Magharees Peninsula, West to Cloghane pNHA Akeragh, Banna and Barrow Harbour pNHA
- Cashen River Estuary pNHA
- Knockatarriv / Knockariddera Bogs NHA
- Lower River Shannon SAC
- Akeragh, Banna and Barrow Harbour SAC
- Tralee Bay and Magharees Pensinsula, West to Cloghane SAC

5.3. Environmental Impact Assessment (EIA)

- 5.3.1. 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.

6.0 The Appeal

6.1. Grounds of Appeal

The issues raised are summarised as follows:

Unauthorised Development

- The applicant has carried out extensive works at this site to date
- Cutting away of large amounts of vegetation and ash trees

Use

- Contended that the use is private but this is contradicted by the size and scale of permission sought.
- The amount of money spent suggests that the proposed use may be commercial.
- Unsuitable / inappropriate use in an agricultural area

- Why is there a need for two runways?
- The length of the run ways suggests larger air craft use

Health and Safety

- Air craft flying over private dwellings, gardens, power lines would give rise to a health and safety hazard and an invasion of privacy.

Compliance with conditions

- Concern that conditions attached to grant of permission would be complied with.
- Who is responsible for compliance issues?
- The appellants have been informed by Kerry County Council that issues of low flying is a civil matter.

Letter sent to Mrs Susan O'Dell

- Applicant concerned about the manner and tone of the letter and the matter has been referred to the guards.

Negative Impact Upon Amenity of the area

- Devaluation of property
- Loss of privacy
- Noise
- Distress to adjoining local residents
- Distress to livestock and impact negatively upon agricultural practices.

Appeal Accompanied with:

- Photographs
- Copy of letters

6.2. Planning Authority Response

None received.

7.0 Assessment

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

- **Principle of the Development**
- **Impact Upon Residential Amenity and Amenity of the Area**
- **Unauthorised Development and Compliance Issues**
- **Other Matters**
- **Appropriate Assessment**

7.1. Principle of the Development

- 7.1.1. 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.'
- 7.1.2. The subject proposal is for the use of a single engine, privately owned Flexwing (fabric – on - open frame type of wing, controlled by a hand bar similar to that of a hanglider) 2 seat microlight aircraft, powered by a Rotax 65Hp, 582cc, 2 stroke, internal combustion petrol engine, with a max cruising speed of 60mph.
- 7.1.3. The applicant submits that he may (but unsure) purchase a second aircraft (fixed wing) 2 seat aircraft with a closed in cabin, it is contended that use of the aircrafts would be for his own use and therefore would not be in use concurrently with the existing aircraft.
- 7.1.4. The proposed shed measuring c. 288 sq. m is required to house machinery (a tractor with front loader, trailer, grass topper, various tractor and loader implements along with animal feed stuffs) and other materials related to the maintenance of the grass strip, as well as envisaged small-scale farming purposes (sheep grazing, hay saving, chickens, ducks, turkeys, vegetable growing all for home consumption).
- 7.1.5. 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.

- 7.1.6. The proposal to establish a facility for flying a small light aircraft on an existing grass field and to construct a shed for the storage of the light aircraft, as well as farming and domestic property in an area zoned rural general, is considered acceptable in principle, subject to the preservation of landscape amenity, including residential amenities in the vicinity. Subject to condition, I am of the opinion the proposal is acceptable in this zoned 'rural general' and working agricultural area.
- 7.1.7. I note C4 of the draft decision to grant planning permission (Reg. Ref. 17/650) which restricts the planning permission to a five-year temporary permission. I consider that this condition is appropriate and justifiable in the subject appeal case instance as it will allow for a review of the development having regard to the circumstances then pertaining and in the interest of residential and general amenity of the area.

7.2. Impact Upon Residential Amenity and Amenity of the Area

- 7.2.1. I note the appellants' concerns about the potential use of the proposed facility for larger aircraft, noise impact, devaluation of property, loss of privacy and more frequent use than that submitted by the first party.
- 7.2.2. It is submitted that an aircraft of the type proposed can only operate during daylight hours and under suitable dry and relatively calm wind weather conditions. Normally from March to November depending on ground conditions. This substantially limits the traffic / flying frequency possible in County Kerry. Flying would occur in the main on Saturdays and Sundays and possibly a public holiday and during the week on long summer evenings, but all weather dependent and dependent on the applicant's free time. It is contended that in a good year that 30 flying days would be a lot.
- 7.2.3. Information on file states that sound levels are less than those of a tractor or a lawnmower and that while a tractor's engine and a lawnmower's engine is constantly running for several hours in the same confined area an aircraft's noise is transient i.e. its not constant & passes a given point in 0.041 of a second. With a climb out speed of 88 kph and approach to land speed of 80 kph the aircraft will pass a 10m long house in less than half a second. The aircraft engine's noise will be at its

greatest during take-off and climb-out due to being set to max RPM while during the approach and landing phase it will be at its quietest and almost inaudible due to being set to idle. At idle it would be totally inaudible to anyone inside a house. In any given year the time spent passing any one house during an Approach to Land on 100 occasions would come to a total of 45 seconds and 42 seconds during take-off.

- 7.2.4. Sound readings, as well as readings of other common petrol motor driven machines such as lawnmowers, tractors etc have been provided. Also supplied is a copy of the relevant noise regulations for registering aircraft of this type in the UK. I note that an aircraft at or above 500 ft AGL can legally fly unhindered.
- 7.2.5. I agree with the opinion of the planning authority that from the information submitted that noise levels, disturbance, privacy concerns etc. are likely to be at the extreme low end of the scale. Aircraft of this type clearly emit noise far below normal 'disturbance' levels and a single private aircraft, proposed, is likely to result in a low traffic frequency.
- 7.2.6. I do not agree with third-party opinion that the proposed development would devalue property in the area. Regard is had to the scale and nature of the proposal and conditions attached to the draft decision to grant permission. I recommend should the Board agree with my recommendation to grant planning permission that C3 and C4 of the draft grant of planning permission be attached to any decision to grant planning permission forthcoming from the Board. See section 3.1 of this report above for details of C3 which restricts use and C4 which limits the development to a temporary 5 year planning permission. I consider C4 appropriate in order that the impacts of the proposed development on residential amenities and agricultural activities in the vicinity can be reassessed after an appropriate period.
- 7.2.7. I do not consider that the proposed development would be likely to cause any loss of privacy by way of overlooking or disturbance to livestock which would be considered material. It is relevant to note that any private aircraft are permitted to fly over any properties / land at a height of 500' above ground level or higher irrespective of where they may take off or land.

7.3. Unauthorised Development and Compliance Issues

- 7.3.1. Third party concern is expressed with respect to works carried out at the site to date incl. cutting away of large amounts of vegetation and ash trees. Concern is also expressed that conditions attached to the grant of permission would not be complied with and that complaints would not be followed up by the relevant authorities.
- 7.3.2. Cognisance is had to photographic evidence submitted by third parties with respect to tree felling. Given that there is no tree preservation order on the site, landscaping works carried to boundary hedges and tree trimming / removal on private agricultural lands is not a planning matter.
- 7.3.3. Unauthorised development and compliance with conditions comes within the sole remit of the planning authority. Works to the access and works carried out to date at the site is a matter for consideration by the planning authority. It is within their remit and control to take enforcement action should it be considered prudent to do so. This is not a matter for An Bord Pleanala.
- 7.3.4. I note that the draft permission granted (Reg. Ref. 17/650) for the subject development has seven number conditions attached and I highlight again that C4. limits the use of the subject appeal site to a temporary period of 5 years from the date of the decision. The requirement of a temporary permission will ensure that the impact of the development is satisfactorily monitored. Should valid complaints be made to the p.a. then it is within their control to refuse to grant permission for continuation of use after the 5 years temporary permission expires. I consider the condition is clear, reasonable and justifiable, and will ensure that the development can be reassessed after an appropriate period.

7.4. Other Matters

Health and Safety

- 7.4.1. The Irish Aviation Authority (IAA) promotes and oversees the safe operation of all aspects of General Aviation within the State and also Irish registered aircraft and Irish license holders wherever they may be engaged in aviation activity. They are responsible for the management of Irish controlled airspace, the safety regulation of Irish civil aviation and the oversight of civil aviation security in Ireland.

- 7.4.2. Information on the IAA website states that: ‘Under the Irish Aviation Authority (Personnel Licensing) Orders, a pilot of a microlight aeroplane is required to hold a Private Pilot Licence (Microlight) (abbreviated "PPL(M)"). A person learning to fly a microlight aeroplane must hold a Student Pilot Licence (abbreviated "SPL") before flying the aeroplane alone ("solo" flying) and he/she may only fly solo when authorised by an appropriately licensed Flight Instructor’.
- 7.4.3. Given the information on file, I am of the opinion, that subject to all relevant conditions of the planning permission being complied with and subsequently all IAA regulations and any other relevant competent authority being complied with, that the proposal is acceptable in this regard.
- 7.4.4. Given the scale and nature of the proposal and conditions attached limiting use to a single private microlight aircraft I see no reason to refuse permission on grounds of health and safety.

7.5. **Appropriate Assessment**

- 7.5.1. The p.a. carried out a screening report which concludes that there is no potential for significant effects upon a Natura 2000 site.
- 7.5.2. 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.

8.0 **Recommendation**

- 8.1. I recommend that planning permission be Granted subject to the conditions set out below.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the land-use zoning of the site; zoned, 'Rural General', the nature, extent and location of development on the site and in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not, be injurious to agricultural activities, or injure residential amenity of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 22nd May 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. The use of the proposed airstrip shall be for the private, non – commercial operation of a single, private Microlight aircraft in the ownership of the applicant (James McErlan) of the type described in the information submitted on 22/05/2018. Apart from the storage of a second aircraft, no more than one such aircraft may be used or be operated at the facility or site at any one time.

Reason: In the interest of residential amenity and general amenity of the area.

3. This permission shall be for a period of 5 years from the date of this order. The use of the site as an airstrip shall cease on or before the expiration of a period of five (5) years from the date of this decision.

Reason: To allow for a review of the development having regard to the circumstances then pertaining and in the interest of residential and general amenity of the area.

4. The proposed shed shall be located and constructed in accordance with drawings and details received on 07/07/2017

Reason: in the interest of orderly development.

5. All proposed external materials and finishes to the proposed shed shall be muted natural tones of dark green or dark grey.

Reason: In the interest of visual amenity.

6. The proposed shed shall be used for private storage or agricultural purposes only and not for any commercial or habitation uses.

Reason: To regulate the use of the site and to protect residential amenity.

7. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Fiona Fair
Planning Inspector
12.02.2019