



An
Bord
Pleanála

Inspector's Report ABP-302179-18

Development	Construct stock feeding shed and underground sewerage tanks
Location	Feohanagh, Baile na ngall, tra li, Co Chiarrai.
Planning Authority	Kerry County Council.
Planning Authority Reg. Ref.	18/477
Applicant(s)	Eoin O'Muircheartaigh.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Four number Third Party
Appellant(s)	<ol style="list-style-type: none">1. John and Noreen Boland2. Dr. Aoife Granville3. Micheál Grainbheal4. Cuan Granville
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 at Feohanagh, Baile na Ngall, Tra Li, Co Chiarrai, circa 1 Km south east of the settlement of Feohanagh, north of Dingle in west Kerry. The site is located to the west side of the L-12234, local minor road. The area is remote, rural and agricultural in nature with very little development.
- 1.2. The ground level across the site rises gently from the public road to the rear (west) of the site. The roadside boundary comprises a low sod, stone and hedge boundary.
- 1.3. The area is used for agricultural grazing lands, rural, remote and sparsely populated.

2.0 Proposed Development

2.1. Permission for:

- An agricultural building (stated area of 28.4 m x 30.04 m = 853.14 sq. m)

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Planning permission was granted subject to seven number conditions. Conditions area summarised as follows:

Condition 2 S48 Contribution towards cost of public infrastructure of €2,472.30

Condition 3 Cross section through the site indicating existing and proposed ground levels, public road level and the proposed FFL

Condition 4 External cladding finish shall be dark grey or dark green colour.

Condition 5 Roof water to be piped uncontaminated by slurry, feedstuffs or other polluting matter into a suitable soakpit or free flowing watercourse.

Condition 6 proposed slurry storage tank shall be constructed in accordance with the relevant Department of Agriculture, Food and Marine specification.

Condition 7 Requires that the development shall be screened from the surrounding countryside with native hedges and trees such as:

- Native Evergreens (Holly, Scots Pine, Yew)

- Native Deciduous (Oak, Elm Ash, Birch, Hazel, Alder, Willow, Whitethorn, Blackthorn, Irish Whitebeam, Rowan)
- Exotic species such as Cypress Leylandii, Rhododendron or Laurel shall not be used

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- Planning Report: The planning report supports the draft decision to grant planning permission. It is considered having regard to the agricultural nature of the area, and the distances from the neighbouring properties and to any submissions received in relation to the application, that subject to condition the proposed development would not be prejudicial to public health and would not seriously injure the amenities of the area or of property in the vicinity.

3.2.2. Other Technical Reports:

- None

3.2.3. Prescribed Bodies:

- None

3.3. Third Party Observations

Five number objections received concerns raised are similar in nature to those raised in the third party appeals, summarised below.

4.0 **Planning History**

No recent relevant planning history associated with the subject appeal site.

I note the planners report on file which states: 'The applicant had been recommended for refusal of permission as per Reg. Ref. 17/1238 for a similar structure on a site to the north of the proposal. The application was subsequently withdrawn. Pre-planning took place subsequently and the current plot was identified as a potential site for the proposed shed'.

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. Outside of the settlement boundary for 'Feohanagh'. '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

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

The appeal site is not within the line of Protected Views and Prospects. Designated Views along the coast road to the west, north and south of Feohanagh. This view does not overlook the appeal site – designated view is in the opposite direction towards the coastline as per Map 12.1d Amenities /Views and Prospects.

5.2. Natural Heritage Designations

The site is located approximate to the following Natura 2000 sites:

- Special Protection Areas: Dingle Peninsula SPA approx. 0.5 Km distant
- Special Area of Conservation: Mount Brandon SAC approx. 2.9 Km distant

5.3. Grounds of Appeal

Four number third party appeals by: John and Noreen Boland, Dr. Aoife Granville, Micheál Grainbheal and Cuan Granville. They are jointly summarised as follows:

- Negative impact upon the environment, flora and fauna, humans, water, air, landscape and cultural heritage
- Elevated unspoilt beautiful location
- Proposal is too big. It would break the skyline and be unsightly, contrary to the visual amenity of the area.
- No environmental impact assessment carried out
- Health and safety issues raised have been ignored by Kerry County Council
- The road serving the proposal cannot handle the level of traffic arising
- The road will be impassable
- Negative impact to adjoining home owners
- Contribution required by condition towards upkeep of the road is deficient
- Access to residences would be affected by the shed
- Negative visual impact and would block views
- Biological and chemical hazards used and created
- Herbicides and pesticides causing respiratory illness
- Lighting issues
- Leachate run off
- Noise pollution
- Vibrations from machinery
- Sanitation silo gases (CO₂ and NO₂)
- Diesel exhausts / fumes
- Hydrogen Sulphide gas from the slurry tanks

- Nitrogen Dioxide from the silage.

Appeal accompanied with:

- Copy of objections submitted to the planning authority.

5.4. Planning Authority Response

None Received.

5.5. First Party Response

5.5.1. A response was received from the first party, it is summarised as follows:

- The proposed farm building is required by the applicant to retain a viable occupation and to comply with environmental and European directives re Agriculture
- A shed is imperative for the welfare of livestock
- The location was specifically chosen, remote, away from all residential housing and from the Wild Atlantic Way
- The site is 0.7 Km away from the nearest residence to the south and 0.83 Km from the nearest residence to the north.
- The site 0.83 Km from the Wild Atlantic Way and not visible from it.
- The road is capable of serving the proposed development and has not been damaged by the applicant or other members of the farming community as alleged by the appellants.
- The shed will be built to Department of Agriculture specifications and modern sewerage and pollution control measures will have to be adhered too.
- None of the appellants reside permanently in Feothnach or the surrounding hinterland. No resident from the area has objected.
- The site shall be suitably landscaped in accordance with condition attached to the draft grant of permission.
- Response accompanied with copy of brief from Crowley Consultants re need for the development and a letter from Teagasc adviser regarding the

applicant's qualifications and the requirement for the development.

Summarised as follows:

- Applicants lands are fragmented and this specific site was chosen carefully – outside of the prime or secondary special amenity area and away from the Wild Atlantic Way and adjoining residential dwellings.
- Shed is necessary to comply with the Nitrates Directive
- Building is necessary for protection of ground water
- There is a requirement for 18 week slurry storage, based upon stocking rates, in county Kerry.
- Cannot see how the building would in any way change the use or the creation of chemical or biological hazards, herbicides and pesticides on the farm.
- Don't believe that the lighting in the new building would adversely affect life in the area.
- The building is vital to maintain and develop a viable farm
- Building is vital to agricultural viability of the applicant and to protect the environment.

6.0 Assessment

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

- **Principle of the Proposed Development**
- **Visual Impact**
- **Impact Upon Residential Amenity & Traffic**
- **Pollution Control**
- **Environmental Impact Assessment (EIA)**
- **Appropriate Assessment (AA)**

6.1. Principle of the Proposed 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. The current proposal is for the construction of an approx. 853.14 sq. m agricultural shed, 8.25 m in height, of galvanised sheeting to roof and concrete walls and galvanised finish to elevations. To be used as a slatted shed with underground storage tanks for housing of stock. It is situated on a greenfield site which forms part of an agricultural landholding, in a rural area which is remote and agricultural in nature.
- 6.1.3. The applicant submits that the proposed farm building is required by the applicant to retain a viable occupation and to comply with environmental and European directives re Agriculture. It is contended that the location was specifically chosen, remote, away from all residential housing and from the Wild Atlantic Way.
- 6.1.4. Section 4.8.1 Agriculture of the 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.'

- 6.1.5. 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.
- 6.1.6. The proposal is for an agricultural shed to house farm animals in accordance with the Nitrates Directive and to ensure the protection of water against pollution caused by agricultural sources. It is submitted that due to the stocking level on the farm, the fragmented nature of the farm and the sensitivity of the area that the outwintering of stock on this farm would not be in compliance with the Nitrates Directive. In County Kerry the storage requirement is for a minimum of 18 weeks under the Directive.
- 6.1.7. The proposal is for an agricultural building in an area zoned rural general, such development is supported by the policies of the development plan, subject to the preservation of landscape amenity, including residential amenities in the vicinity. Subject to condition, I am of the opinion the proposal is wholly acceptable in this zoned 'rural general' and working agricultural area.

6.2. **Visual Impact**

- 6.2.1. The agricultural shed of some stated 853.14 sq. m with an apex height of some 8.25m is to be set back from the public road by 28m. The appeal site is greenfield with no farmyard or other farm buildings located at this location. It is submitted that a large portion of the applicant's lands are zoned either prime or a secondary special amenity area under the current Kerry County Development Plan 2015 – 2021 and that this site was chosen in consultation with the planning authority given its rural general zoning designation and separation distance to adjoining dwellings and the Wild Atlantic Way.
- 6.2.2. The proposed scale and height of the shed while substantial has the characteristic of a modern standard agricultural shed. In particular, I note condition 4 of the draft grant of permission by the p.a. which requires that the cladding / exterior finish shall be in

a dark grey or dark green colour. Condition 3 which requires that the FFL shall be agreed. I also note condition 7 which requires natural screening to be put in place to the front roadside boundary. Indigenous, only, species are to be planted and no leylandii trees are permitted. I agree such conditions are reasonable and enforceable and should be included in any decision to grant permission forthcoming from An Bord Pleanála.

- 6.2.3. It is submitted that the site is 0.83 Km from the Wild Atlantic Way and not visible from it. The appeal site is not within the line of Protected Views and Prospects, as per Map 12.1d Amenities /Views and Prospects. Designated Views along the R549 are in a westerly direction and are one direction only. This view is somewhat distant and does not overlook the appeal site – designated view is in the opposite direction towards the coastline.
- 6.2.4. I consider that, given landscape character, proposed planting and subject to condition, the agricultural building would have a relatively minor visual impact and would not give rise to a visually incongruous feature. I highlight that the proposal is for an agricultural structure in a rural setting, the proposed shed would, therefore, be generally consistent with the visual character of the area. As such, I consider the proposed development is acceptable in visual terms.

6.3. Impact Upon Residential Amenity and Traffic

- 6.3.1. The site is 0.7 Km away from the nearest residence to the south and 0.83 Km from the nearest residence to the north. Therefore, I do not believe that the proposed development would be likely to impact negatively on residential amenity currently enjoyed by existing dwellings at this location.
- 6.3.2. While the proposed development may cause a slight increase in terms of traffic, noise and general activity on the subject site, such activities and impacts would not, in my opinion, be unduly injurious, and would be consistent with what could reasonably be expected in a rural area.

6.4. Pollution Control

- 6.4.1. Third party concern has been raised with respect to pollution control, in particular, biological and chemical hazards used and created, herbicides and pesticides, leachate run off, silo gases etc. This is a slatted shed for use for agricultural purposes in a rural area. Subject to a management schedule being submitted to and agreed in writing with the planning authority, I am of the opinion that the proposal would not give rise to pollution.
- 6.4.2. It is a requirement under EU policy that all farmers must comply with the Nitrates Directive. In order to avoid pollution and to protect residential amenity I recommend that a condition be attached to any grant of planning permission requiring that a management schedule be put in place.
- 6.4.3. I note the conditions attached by the planning authority, to the draft grant of permission (Reg. Ref.18/477), with respect to pollution control and I recommend that should the Board agree that planning permission be forthcoming, in the subject appeal case, that similar conditions be reattached to any decision to grant permission. I recommend that a condition should also be attached with respect to lighting.

6.5. Environmental Impact Assessment (EIA)

- 6.5.1. 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.

6.6. Appropriate Assessment

- 6.6.1. Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the 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 General' landscape zoning designation of the site, the separation distances to existing adjoining dwellings, the pattern of development in the vicinity, the existing and proposed screening and planting on the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not give rise to a traffic hazard or a health hazard and would not seriously injure the amenities of the area or of property in the vicinity. 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 carried out and completed in accordance with the plans and particulars lodged with the application, 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. (i) All concrete walls shall have externally rendered finishes.
- (ii) All proposed cladding / exterior finish shall be dark brown, dark grey or olive green.

Reason: In the interest of visual amenity.

3. (i) The FFL shall not be more than 250mm above existing ground level measured at the lowest point along the external walls of the shed.
- (ii) Within one month of the grant of permission, the applicant shall submit, for the written agreement of the planning authority, cross – sections through the site indicating the existing and proposed ground levels, public road level and the proposed finished floor level.
- (iii) The levels shall be referenced to a clearly identifiable and easily located benchmark on the public roadway. The location and value of the benchmark shall be indicated on the drawing.

Reason: In the interest of visual amenity.

4. 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.

5. The slatted shed shall be used only in strict accordance with a management schedule which shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The management schedule shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2018, and shall provide at least for the following:

- (1) Details of the number and types of animals to be housed.
- (2) The arrangements for the collection, storage and disposal of slurry.
- (3) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

Reason: In order to avoid pollution and to protect residential amenity.

6. A minimum of 18 weeks storage shall be provided in the underground storage tank. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of environmental protection and public health.

7. The existing roadside boundary shall be retained except where its removal is necessary for the construction of an entrance with adequate sight lines. Precise details of the revised entrance layout shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity and traffic safety.

8. A landscape plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. It shall include:

- (i) Proposals for screen planting along the north, south and eastern boundaries.

(ii) The site shall be landscaped, using only indigenous deciduous trees and hedging species, such as

- Native Evergreens (Holly, Scots Pine, Yew)
- Native Deciduous (Oak, Elm, Ash, Birch, Hazel, Alder, Willow, Whitethorn, Blackthorn, Irish Whitebeam, Rowan)
- Exotic species such as Cypress, Leylandii, Rhododendron or Laurel, shall not be used.

(iii) Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity

9. 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.

10. 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

07.01.2019