



An
Bord
Pleanála

Inspector's Report ABP-302242-18

Development

Planning Permission to construct (1)
Revised boundary to dwelling for
additional amenity area and (2)
Compound area for storage and
display of Agri-Machinery and
Retention of Boundary Fence and
small Storage Shed with Office and
Storage area within existing
Commercial Building

Location

Freaghduff, Cashel County Tipperary

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

18/600627

Applicant(s)

Conor Breen

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

Siobhan Burke

Date of Site Inspection

03rd October 2018

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal relates to a site which has a stated area of 1.3 hectares and is located within a rural area in the townland of Freaghduff. The site is located approx. 2.5km to the north of Cashel and approx. 2.4km west of junction 7 on the M8 motorway in County Tipperary. The appeal site is accessed from the L1303 Cashel to Ardmayle Road, and extends across the road to include an existing business sign located opposite the site. The site comprises an existing house and Breen Farm Machinery (BFM) enterprise. that provides sales and services for agricultural machinery and plant. The site also contains domestic storage buildings and a timber enterprise.

- 1.2. The area along the northern boundary of the site is defined by a 3m high wall and is used for display of agricultural machinery. Visitor parking is located close to the entrance to the offices along the rear wall of the neighbouring property to the south. There is an existing wash bay area to the southern side of these commercial buildings. The concrete forecourt area extends to the west and southern parts of the site and is used for the outdoor storage and display of agricultural machinery. There are a number of additional sheds similarly used for storage of agricultural machinery.

- 1.3. Staff car parking is located along the south western perimeter of the hard standing compound area, allowing an open area for commercial vehicles to enter and turn. The hard standing compound area to the south east is used for the storage and processing of timber logs. The landscape in the vicinity is pastoral in character with agriculture being the predominant use. Settlement in the area consists of one off housing fronting onto the road network and a number of farmsteads. There are five residential properties located to the south of the appeal site, and another to the north which is the home of the third party appellant.

2.0 Proposed Development

- 2.1. Permission is sought to construct a revised site boundary to dwelling for additional amenity area, commercial compound area for the storing and display of plant &

agricultural machinery, small storage shed. Permission is also sought for retention of first floor office and first floor storage area within an existing commercial building and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

Grant of permission subject to 11 conditions. Of note is the following conditions...

Condition no. 6: Operational hours conditioned.

Condition no. 7: No vehicles to be parked on road side frontage and all loading/unloading activities to take place on site.

Condition no. 10: Noise limits during operation.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Irish Water (02/06/18): No objective.

Municipal Engineer (21/06/18): No objection from a road perspective.

Planning Reports (10/07/18): The design scale and nature of development proposed was considered acceptable in the context of existing permitted development and the amenities of adjoining properties. A grant of permission was recommended subject to the conditions outlined above.

3.3. Third Party Observations

A submission was received from Siobhan Burke, Freighduff, Cashel, Co. Tipperary.

- The proposal constitutes an intensification and would have an adverse impact on adjoining amenities.
- Previous conditions on opening hours are being breached and a reduction in the opening hours should be permitted.

- The operation on site has been detrimental to the visual amenity and rural character of the area. The proposed commercial compound would have a similar impact. The impact of traffic and machinery in close proximity to the observer dwelling is noted.
- There is a history of non-compliance with conditions attached to permission granted at this location and there has been a lack of enforcement of such.
- There has been parking of vehicles along the roadside, which is a traffic hazard.
- The existing operation and proposed development gives rise to air and noise pollution.
- The operation on site and proposed development would have an adverse impact on the observer residential amenity.
- The provision of a display area along the road would cause distraction and would be a traffic hazard.

4.0 Planning History

PL92.248370: Permission granted for construction of extension to commercial building, increase commercial compound area for storing plant and machinery, wastewater treatment plant, relocate wash bay and upgrading of existing entrance.

15/6000765: Grant of permission for change of use of existing domestic yard and shed for storage and processing of timber logs.

12/294: Permission granted for retention of domestic shed, extension as constructed to commercial garage, change of use of existing residential area to commercial compound, change of use of agriculture lands to an existing of the commercial compound and perimeter concrete block wall.

96/5: Permission granted for retention for a domestic shed.

P312565: Permission granted for extension to existing dwelling.

P39911: Permission granted for erection of a garage and workshop.

P38587: Permission granted for use of garage for commercial purposes.

P36491: Permission granted for storage shed.

P33505: Permission granted for garage,

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the South Tipperary County Development Plan 2009.

Section 5.6.2 Enterprise in the Open Countryside

The Plan (as varied), on a case-by case basis, will facilitate enterprise developments, which have the purpose to facilitate a start up entrepreneur in accessing appropriate sites. Proposals will be balanced with the need to protect the residential amenities of adjoining landowners and the visual amenities of the area. In this respect, proposals for new buildings should be of domestic proportions and capable in time of returning to a domestic use. It should be noted for clarity, that uses that would entail significant customer draw, including non-farm related shops/retailing will not be considered appropriate.

Policy ED9: Enterprise in the Open Countryside

It is the policy of the Council to support and facilitate the provision and/or expansion of appropriate small scale rural enterprise in the open countryside within residential sites and in vacant or derelict buildings. Development proposals will be required to meet the following criteria:

- a) The development shall not have an adverse impact on the residential, environmental and rural amenity of the area;
- b) Any new structure shall be of a scale appropriate to the size of the site, and be sited and designed to ensure it does not detract from the rural setting and landscape character of the area.
- c) The development shall comply with the development management standards set out in Chapter 10.

Where the enterprise or activity develops to a scale that is inappropriate by virtue of activity or size in its rural context, the Council will seek to encourage its re-location to a more suitable location on zoned land within towns and villages.

Section 5.6.3 Non Conforming Uses

There are cases where authorised commercial activities operate at locations which are not compatible with current planning objectives. It is desirable to protect existing employment uses and allow appropriate expansion of such facilities where this does not result in conflict with adjoining uses, detriment to the environment, visual amenity or traffic.

Policy ED 10: Non Conforming Uses

It is the policy of the Council, where commercial/industrial/agricultural enterprises exist as non-conforming but long established uses, to support their continued operation and expansion provided such does not result in; loss of amenity to adjoining properties, adverse impact on the environment, visual detriment to the character of the area or creation of a traffic hazard.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal has been submitted by Peter Thomson Planning Solutions on behalf of Siobhan Burke, Freighduff, Cashel, Co. Tipperary. The grounds of appeal are as follows...

- The appellant's property is located to north of the appeal site. It is noted that permission should be refused as it is further intensification development and would be detrimental residential amenity. The additional storage/display area will be detrimental to the visual amenity and rural character of the area. It is noted that the additional storage space will lead to intensification of activity on site included additional noise impact and general nuisance. Permission should be refused for the commercial compound and a condition attached restricted use of the area behind the workshop for repair and maintenance of vehicles. A condition is also required to provide an additional boundary treatment/buffer along the northern boundary.
- It is noted that the external area to the rear of the workshop is used for unauthorised repair of machinery causing a nuisance to and adverse impact on residential amenity and loss of privacy.
- It is noted there has been a breach of conditions attached to permissions on site in relation to deviation from permitted plans, discharge of surface water onto the public road/area to the front of the site, parking of vehicles along the roadside, operating hours and noise levels.
- Development Plan policy is noted with that operations on site has been allowed to become development that is outside the boundaries defined by Policy ED9 (Enterprise in the Open Countryside). It is noted that the Board previous decision on site had regard to Policy ED10 and that the imposition of conditions to safeguard the appellant's amenities have not this result.
- The appellant has noted dissatisfaction with the Councils response to their objection and in particular enforcement of conditions at this location. It is noted that some of the condition have been unenforceable including

conditions on operating hours, noise, boundary treatment, landscaping and signage.

- It is noted that the proposal would give rise to intensification of operations on site, which at present generate noise, disturbance and dirt (repair work in the external area to the rear of the workshop adjoining northern boundary) that would have an adverse impact on the appellant's residential amenity.
- It is noted that if permission is granted an additional buffer is required along the northern boundary and no storage of machinery along this boundary.
- There is no indication of what is to be stored in the small storage shed with question regarding the need for such in the context of there being a large workshop on site.
- The retention of the existing palisade fence at the new storage and display area is inappropriate in terms of visual amenity and the rural character of the area.
- The appellant notes that the applicants have not constructed the development permitted under PL92/248370 (vehicular access to workshop) as well as noting there should be no vehicular access on the front of the workshop. Condition no. 11 of PL92/248370 is noted and is not being implemented to the detriment of the appellant's residential amenity.
- The boundary wall along the northern boundary is lower than the remainder of the boundary and the appellant requests a condition that preventing use of this area for vehicular access to the workshop and an increase in the height of the wall to match the remainder.
- The appellant notes that existing vehicular access is a major source of nuisance and that a new entrance should be provided further south between the dwelling on site and the existing dwelling further to the south of it.
- In addition to a condition specifying noise limits a requirement for noise monitoring equipment should be introduced.
- It is noted that hours of operation should be clarified and in particular should apply to deliveries.

- A traffic management plan should be required.
- It is noted that the existing business has devalued the appellant property.

6.2. Applicant Response

Response by Agri Design & Planning Services on behalf of the applicant Conor Breen.

- It is noted that the extended display area will improve the storage provision on site and aid compliance with condition no. 11 of PL92.248370.
- The applicant note that they are complying with conditions set down under previous permissions on the appeal site including operating hours, advertisement signs, surface water drainage, lighting and waste.
- The applicants note that it is not prohibited to display machinery along the northern boundary but is prohibited to display large machinery with an agreed height with the Council.
- The applicant notes that the appellants claim that machinery is repair behind in the area behind the workshop is untrue with the rear yard used to store machines that will be entering and existing the workshop.
- It is noted that workers cannot overlook the appellants property from the site as the wall along the northern boundary is between 1.7 and 1.8m in height.
- It is noted an alternative access cannot be provided further south due to restricted sightlines.
- The applicant note the proposal is not intensification of activity but is intended to improve the amenity of the existing dwelling on site and provide additional display area that will facilitate more efficient operation of the existing enterprise on site.

6.3. Planning Authority Response

Response by Tipperary County Council.

- It is considered that the new compound area will remove parking of machinery along the northern boundary and provide further space for operation on site and is an improvement to existing facilities.
- The small storage shed will not result in any impact on the adjoining properties due to its modest scale.
- It is considered that the proposal would not lead to increased noise levels.
- The retention of the fence does not detract from the visual amenity of the area.
- It is noted that the condition regarding opening hours is in line with that under previous permission on site (12/294 and 16/600775).
- It is confirmed that the proposal does not require an Environmental Impact Assessment and that a screening for Appropriate Assessment was carried out and it was determined significant impacts on the Natura 2000 network could be excluded.

7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Principle of the proposed development/intensification of use

Visual impact/rural character

Adjoining amenity

Traffic safety

Appropriate Assessment

7.2 Principle of the proposed development/intensification of use:

7.2.1 The proposal consists of a number of elements with permission sought to construct a revised site boundary to the existing dwelling to provide an additional amenity area, a commercial compound area for the storing and display of plant & agricultural

machinery and a small storage shed. Permission is also sought for retention of first floor office and first floor storage area within an existing commercial building, a palisade/metal fence located adjacent the proposed display area and a small storage shed. The site is occupied by an existing commercial development including the sale and repair of plant and agricultural machinery and there is a number of permissions on site authorising the existing use. The proposal is for extension and alteration of such. I would consider that having regard to the established nature of the commercial development, the proposal would be acceptable in principle at this location and would be contingent on it being acceptable in the context of adjoining amenities, visual amenities and traffic safety.

7.2.2 The third party appellant resides in an existing dwelling immediately to the north of site and the grounds of objection are that the proposal consists of intensification of the existing operation on site and would subsequently impact adversely on their residential amenities, through general disturbance, noise and traffic movements as well as noting that there has been unauthorised development on site and a failure to comply with conditions set down under previous permissions.

7.3 Visual amenity/rural character:

7.3.1 The impact of the proposal in terms visual amenity and rural character has been noted by the appellant particularly in relation to the provision of the additional display area and the retention of the metal fencing. The proposal entails retention of office and storage space within the main workshop building, however such is within the existing structure and is subordinate in scale to the degree it would have no significant or adverse visual impact. Permission is sought for a storage shed along the western boundary and the retention of an existing storage shed along the same boundary. Both are modest in scale and would have no significant visual impact.

7.3.2 The display area is located to the east of the site and has road frontage along the L1303. The area is located to the south of the dwelling on site and to the north west of a neighbouring dwelling. It is proposed to retain palisade fencing that runs along the south eastern and southern boundary of the area to be used for display of machinery. I would note that fencing subject to retention is not highly visible due to

its location to the rear of an existing dwelling. In addition a hedgerow has been planted along the fencing that when it matures such will soften the impact of such. The proposed display area has a small amount of road frontage and is located between two existing dwellings. I would be satisfied that the overall visual impact of such would not be hugely significant in the context of the visual amenities and rural character of the area. I am satisfied that the design and scale of the proposed development is such that it would have no significant or adverse impact on the visual amenities of the area.

7.4 Adjoining amenity:

7.4.1 There are a number of dwellings in the vicinity of the site. The appellant's dwelling is located to the north of the site, there is an existing dwelling on site belonging to the applicants and there is an existing detached dwelling located to the south east of the proposed display area. One of the issues raised by the appellant is the proposal is an intensification of use on site and will have a detrimental impact on residential amenity. The existing use is an established and permitted development and the nature of the proposed development does not necessarily give rise to a significant intensification if any.

7.4.2 The level of development in terms of structures/floor area is modest with retention of an office and storage area within the workshop structure that is very subordinate in scale to the existing permitted structure on site and the retention of a small storage shed which is also small in scale. The only new structure proposed is a small storage shed on the western boundary adjacent the wash bay, which is very modest in scale. In the context of the scale of existing development on site, the storage shed is small and is located away from the adjoining residential properties. The additional display area does not necessarily mean that there is a significant intensification of operations and provides additional area to store vehicles that would improve operations on site such as parking and circulation. Notwithstanding the appellant's claims that the proposal would lead to significant intensification the nature of the business in operation is not confined in intensity save in respect of operating hours, noise limits and any other conditions that have been attached to the various permissions grant on site. In respect of the existing operation I would consider that

there are sufficient restrictions in place under conditions attached to the previous permission on site, which include restrictions on operating hours, noise emission limits and confining parking to on site that are sufficient to protect that amenities of adjoining properties. In addition I would note that existing and proposed boundary treatment is sufficient to protect the amenities of all dwellings in the vicinity. I would consider that it would be appropriate to reaffirm these conditions in the event of grant of permission in this case and such would be sufficient to ensure the proposed development would be acceptable in the context of adjoining amenities.

7.4.3 The appeal submission raises a number of concerns regarding the operation of existing business on site in terms of unauthorised development and breach of conditions attached. I would note that issues of enforcement and unauthorised development are not functions of the Board and the Local Authority have ample powers under the Planning Development Act in terms of enforcement. I would note that the existing conditions limiting such elements as operating hours, noise limits, storage of machinery and traffic are sufficient in regards to protecting adjoining amenities if implemented.

7.4.4 The appellant has noted that the structure permitted under PL92.248370 has not been constructed as granted in particular noting access arrangements to the workshop unit. It is notable that the access arrangements in terms of roller shutter doors on the eastern elevation and south eastern corner are not as per the plans permitted under PL92.248370. It is notable that retention of changes in this regard are not proposed as part of development description and that the elements for retention are an additional office and storage space. As such are not part of the application only the elements subject to the retention in the development description are being assessed in this regard.

7.5 Traffic Impact:

7.5.1 The appellant has raised concerns regarding the traffic impact and specifically the parking of vehicles along the roadside. As noted in other sections of this report the proposal is for extension and alteration of an established and permitted commercial development at this location. There is an existing vehicular access to the site and

there is no changes proposed to such. It is also notable that under PL92.248370 condition no. 11 states that no vehicles operationally associated with the development shall at any time be parked on the roadside fronting the site. All loading/unloading activities and turning movements associated with the site operations shall be undertaken within the site.

7.5.2 Having regard to scale and nature of the development, I am satisfied that the proposal would not lead to a significant level of additional traffic over and over the existing operation on site. It is notable that it is a condition of the previous permission that no vehicles are parking along roadside and the appellant has noted that there has been parking of vehicles taking place. I would note that a breach of any condition is an enforcement matter and would consider it appropriate to reaffirm a similar condition in the event of a grant of permission in this case. The substantive part of the development is a new display area for machinery. I would note that such additional space would allow for storage of existing and additional machinery and may provide more circulation, parking and loading space on site and alleviate issues concerning parking of vehicles. Notwithstanding such there is clear restriction in place regard parking of vehicles along the public road and such should be reaffirmed in the event of permitting the current proposal. I am satisfied that the proposed development would be acceptable in the context of traffic safety.

7.5.3 The appellant noted that an alternative access should be provided to the site further south to alleviate concerns regarding nuisance, disturbance and general impact on residential amenity. The proposal does entail the provision of a new entrance and the existing authorised operation has a long established vehicular entrance. The nature of the development proposed is clearly described in the public notices and such is what is being assessed in this regard.

7.6 Appropriate Assessment:

7.6.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, 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 a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the nature of the development proposed, which is required in connection with the existing agricultural business and its location in a rural area and the planning history of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development and the development proposed for retention would not seriously injure the amenities of the area or the residential amenities of adjoining property, would not be prejudicial to public health and 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, completed and retained 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, completed and retained in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. No advertisement or advertisement structure other than those shown on the drawings submitted with the application shall be erected or displayed on the building

or within the curtilage of the site in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, 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 interests of environmental protection and public health.

4. Surface water shall not be permitted to drain onto the adjoining public road.

Reason: In the interest of traffic safety.

5. Any proposed lighting shall be erected by a suitably qualified lighting specialist and the lighting directed and cowled such as to reduce light scatter outside the boundaries of the site.

Reason: In the interests of residential amenity and traffic safety.

6. The hours of operation shall be between 08.00 hours and 20.00 hours Monday to Saturday inclusive in the summer season (1st day of April to 30th day of September) and between 09.00 hours and 18.00 hours Monday to Saturday in the winter season (1st day of October to 31st day of March). The development shall not operate on Sundays or public holidays.

Reason: In the interest of the residential amenities of property in the vicinity.

7. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:

(i) An LAeqT value of 55 dB(A) during the period 0800 to 1900 hours from Monday to Saturday inclusive.

(ii) An LeqT value of 50 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

(b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics – Description and Measurement of Environmental Noise.

Reason: To protect the residential amenities of property in the vicinity of the site.

8. No vehicles operationally associated with the development shall at any time be parked on the roadside fronting the site. All loading/unloading activities and turning movements associated with the site operations shall be undertaken within the site. No large machinery shall be parked along the northern boundary of the site.

Reason: In the interests of traffic safety and residential amenity.

9. Waste oils/fluids/batteries and discarded machinery parts shall be properly stored on site in a defined waste collection area and shall be properly disposed of by specialist contractors at frequent intervals.

Reason: In the interest of public health.

10. All service cables associated with the proposed development (such as electrical, telecommunications and television) shall be located underground.

Reason: In the interest of visual amenity.

11. The landscaping provided for along the palisade fencing defining the machinery display area shall be maintained and supplemented with additional planting, details of which are to be agreed in writing with the Planning Authority prior to the commencement of development.

Reasons: In the interests of visual and residential amenity.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colin McBride
Planning Inspector