



An
Bord
Pleanála

Inspector's Report ABP-302656-18.

Development	Retention of existing industrial unit, concrete yard.
Location	Sheanliss, Midleton, County Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	18/4936.
Applicant	John Dolphin.
Type of Application	Permission.
Planning Authority Decision	Permission with conditions.
Type of Appeal	Third Party
Appellants	Brian Motherway.
Observers	None.
Date of Site Inspection	2 nd December 2018.
Inspector	Philip Davis.

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1.0 Introduction

This appeal is by a neighbouring resident against the decision of the planning authority to grant permission for the retention of an industrial unit and yard in a rural area south-east of the town of Midleton and north of Cloyne. The grounds of appeal relate to amenity, noise and dust arisings.

2.0 Site Location and Description

2.1. Sheanliss townland

Sheanliss townland is located in a rural area some 5 km directly south-east of the town of Midleton and 2.5 km north-north-east of the historic village of Cloyne. The area is characterised by gently rolling countryside of high quality agricultural land in pasture and tillage. It is served by a network of third class roads. The area is settled with a scattering of dwellings and occasional large farm operations.

2.2. The site

The appeal site, with a site area given as 0.42 hectares, is a roughly rectangular shaped area of land on the south side of the L3630 as it runs through the townland. The site is somewhat elevated above the road, and is occupied by a single dwelling with some sheds to the rear on the south-western corner, with an industrial building with dimensions of just over 25 metres in length by 10 metres in width (just under 250 square metres in floorspace), with an apex of 6.5 metres, situated in a paved yard on the western side of the site. A significant part of the site is hard paved and at the time of my site visit various vehicles and plant were parked/stored around the site. The dwelling and industrial unit share an access to the road. The site is bounded by ditches, trees, and high hedgerows, with what appears to be construction waste and other discarded materials along the western boundary.

To the **west** of the site is a detached dormer dwelling with a large garage between it and the site. There are open fields beyond this and to the **south**. There is a dwelling at the entrance of a private road just over 100 metres to the **north-west**.

The L3630 road is to the **north**, with open fields beyond this. There are open fields to the **east**, with the entrance to a large farm complex 250 metres further east.

3.0 Proposed Development

The proposed development is described in the site notice as follows:

Permission for retention of existing industrial unit, concrete yard area and associated site works.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to grant permission for 12 no. conditions, all largely standard conditions for an industrial unit.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- Notes that a previous application for garage and stables on the site was withdrawn following the planners report indicating that the domestic shed was 211 sqm and there were existing commercial activities on the site.
- States that requirement for AA has been screened out.
- Notes a number of relevant policies, including EE9-1 – business development in rural areas.
- Notes no objection in internal consultations (engineering and environment sections).
- Notes that commercial activities seem to have been ongoing on the site pre-2009. It is concluded that enforcement cannot be taken against the use of the land for plant hire operations due to its apparent established use. It seems the site changed from plant hire use to a painting/shot blasting business in the

last 7 years. It is concluded that any plant hire is subsidiary to the shot blasting/painting business.

- It is considered that the business should be regarded as generally in accordance with EE9-1 due to its small scale.
- It is noted that the environment section does not object to the activities and that the noise/odour activities are confined within the shed, and the boundary is heavily planted.
- Water is supplied from a private well and no wastewater is generated on site.
- It is considered broadly acceptable, but a number of items of additional information was required, including a noise assessment.
- Following the submission of a revised drawing and a noise assessment, it was considered that the proposed development is acceptable and permission was recommended.

4.3. **Prescribed Bodies**

None on file.

4.4. **Third Party Observations**

The appellant to the appeal submitted a detailed objection.

5.0 **Planning History**

08/8437: Permission sought for domestic garage and two stables on the site – this application was withdrawn.

03/1505: Permission granted for a dwelling on the site.

The neighbouring dwelling was granted permission in 2004 – **04/8535**.

6.0 Policy Context

6.1. Development Plan

The site is in unzoned land in open countryside. Relevant policy is EE 9-1 on business in the countryside.

6.2. Natural Heritage Designations

There are no designated habitats on the site or in the vicinity. The closest EU designated habitats are in Cork Harbour, just over 4km directly to the west - the Cork Harbour SPA site code 004030 and the Great Island Channel SAC site code 001058– both cover much of the mud flats and tidal grasslands of the estuary.

7.0 The Appeal

7.1. Grounds of Appeal

- It is noted that the site has a long history of unauthorised activities.
- Noted that the application does not include a change of use to industrial, or of the excavation works on site, with no details of the hardstanding/concrete yard area, or the stream which flows along the front boundary of the properties (culverted over).
- It is stated that (contrary to comments in the submission documents), the appellant has been residing in the adjoining house since 2007.
- It is noted that no details are submitted regarding the disposal of extracted dust.
- It is stated that there are significant paint odours around the premises.
- Photographic evidence is submitted to support an argument that the shed has been in existence only since around 2012 and it is argued that no shotblasting was taking place before June 2015.
- It is argued in some detail that the noise assessment is inadequate and that the baseline information submitted to the Council was at a time when there

was no activity at the workshop, or information on the materials which were being sandblasted.

- It is argued that vehicular movements are more regular than indicated in the submitted documents.
- Photographic evidence is given of shotblasting occurring outside the industrial shed.
- It is argued that the boundary does not provide sufficient visual cover in the winter months.
- It is argued that policies on tourism (RC14-3 and RCI 7-3) are relevant – it is argued that the type of activities within the shed are not those those intended by policy 9-3 for rural areas. It is also noted that Objective EE4-3 emphasises that business should be directed to existing towns and settlements.
- Evidence is submitted of significant on and off-site dust deposition associated with the operations.

7.2. Applicant Response

- It is denied that the appellant has lived in the adjoining property since 2007 and it is claimed that he works away from the house during the operating hours.
- It is claimed that the business has been operating on the site since 2005 – prior to the construction of the shed the shot blasting took place in the open air.
- It is noted that the applicant and his family lives on the site and it is implied he has had a strong interest in maintaining low noise and emissions from the operation and has suffered stress due to the appeal (medical evidence attached).
- Letters from neighbours are attached in support of the application.
- It is claimed that the applicant has devoted significant resources to addressing any concerns of the local authority and the appellant.

- It is denied (as is claimed in previous correspondence by the appellant) that there were any irregularities in the site notice.
- The Board is asked to uphold the decision of the planning authority.

7.3. **Planning Authority Response**

The planning authority has not responded to the grounds of appeal.

8.0 **Assessment**

Having inspected the site and reviewed the file documents I consider that the appeal can be addressed under the following general headings:

- Application details
- Principle of development
- Residential amenity
- Public health
- Traffic
- Flooding
- EIAR
- Appropriate Assessment
- Other issues

8.1. **Application details**

The appellant has raised a number of issues regarding the site notice and the description of the proposed development. The site notice was accepted as being in accordance with the Regulations by the planning authority and I see no reason to doubt this. While the description of the proposed development is less than comprehensive I consider that it is accurate and generally describes the scope of the works and I do not consider that it was misleading to any interested locals.

8.2. **Principle of development**

The site is in open countryside in an area indicated, with regard to residential developments, as an area subject to urban development pressure. It is within the outer area of the commuting zone for Cork City and within a few km drive from Midleton, which would be the closest urban area with commercial/industrial zones. The main relevant policy is EE 9-1 'Business Development in Rural Areas, which states that the development of new businesses in rural areas will normally be encouraged where:

- The scale and nature of the proposed new business are appropriate to the rural area and are in areas of low environmental sensitivity.
- The development will enhance the strength and diversity of the local rural economy.
- The proposal will not adversely affect the character and appearance of the landscape.
- The existing or planned local road network and other essential infrastructure can accommodate extra demand generated by the proposal.
- The proposal has a mobility plan for employees home to work transportation.
- Where possible the proposal involves the re-use of redundant or underused buildings that are of value to the rural scene,
- The provision of adequate water services infrastructure, and,
- Provision of a safe access to the public road network (See objective TM 3-1: National Road Network (c) and (d).

I note the arguments submitted by the appellants that in the wider context of development plan policy, this policy is intended to apply more to tourism and related type activities, not an industrial use.

The planning authority notes the evidence that there has been a commercial activity on the site (plant hire) since around 2007, but the industrial structure is of more recent date, probably around 2012. The planning authority accepts that the site has an established commercial use due to the length of time without enforcement. The applicant claims to have been operating a shot blasting/painting operation since 2007. Notwithstanding this, from the evidence available I would consider that it is

not clearly demonstrated that the 'industrial' style activity has any type of established use. I would accept that the site has an established commercial use, but this would only apply to an activity similar or related to plant hire, not an active industrial plant process.

There is dispute between the parties as to how long the appellant has been residing next to the site – I do not consider this particularly relevant save to note that the adjoining dwelling has a planning permission prior to 2007 and appears to have been built before that date. It is clear that the shot blasting business started after the adjoining dwelling was built.

I would conclude overall that while there is an established use for plant hire, the use of the site for industrial type uses is not established, but is implied by the site description. While I accept that the development plan supports and encourages appropriate small scale businesses within rural areas, it is not clear to me that this is a justification for processes that have significant potential for nuisance and pollution, which would normally be most appropriate for established and zoned industrial lands. I would, however, consider that given the small scale of the operation and the established use, that the application should be assessed on its own merits.

8.3. Residential amenity

The industrial shed is just some 30 metres from the appellants dwelling, separated by a ditch and heavy vegetation – there is also a large garage on the appellants property more or less between the house and the industrial unit. The shed is in an excavated depression which provides a certain level of visual protection and some noise suppression. The applicant submitted a detailed noise report – the main noise emissions are from compressors, air filters, and the shot blasting operations. The report concluded that the industrial unit could operate in a manner which would minimise direct noise/dust impacts on the area – most obviously the appellants property. The appellant has also complained of discernible chemical odours from the painting operations.

The appellant has argued that the baseline assumptions of the report are not a reflection of the reality of the operations on site – photos are submitted, for example, indicating outdoor shot blasting operation. The applicant has noted of course that works take place during normal working hours and not in the evenings or weekends when residents are most likely to be disturbed.

The planning authority are of the opinion that with appropriate conditions and monitoring the industrial unit can be operated on the basis that noise and dust can be kept down to reasonable levels and in coming to this conclusion they have no doubt had regard to the desirability of encouraging some employment activity within such a rural area. Notwithstanding this, I cannot agree with their conclusion. To return to the basic principles of good planning practice, I would consider this proposed industrial unit to be far too close to an established dwelling. I do not consider that a unit of this nature would be considered acceptable in such close proximity to a dwelling if it was not for retention. It would seem to me inevitable that operations of an inherently noisy and occasionally dusty operation will cause disturbance to the adjoining dwelling above and beyond what is reasonable in such a rural environment. I would therefore recommend that the retention of the industrial unit is refused for this reason.

8.4. Public health

The proposed unit has no apparent water supply and no toilet or other sanitary provision. The local authority appears satisfied that there are no potential water issues. I assume – although it is not stated – that the water/sanitary facilities of the dwelling are used for the unit. No information has been provided on this, although I note that the Environment Section of the Council appeared not to have an objection to the arrangements.

Older OS plans indicate a watercourse running in a westerly direction parallel and on the northern side of the road. This watercourse seems to be culverted under the road or along the road drains – it reappears as a surface water stream in front of the appellants house. This seems to discharge to larger watercourses which flow towards Cloyne village.

I would be very concerned at the lack of information on the disposal of wastewater from the site – both with regard to extra employees within the building and the potential for the discharge of waste liquids from the operations. If the Board is minded to grant permission I would recommend that it seeks additional information on the location/design/capacity of the existing wastewater disposal system (presumably a septic tank) and the provision for the safe storage and appropriate disposal of waste liquids from operations on the site.

8.5. Traffic

The industrial unit is relatively small, and I would not consider it likely that it would generate traffic over and above the use of the site for the established use of plant hire. Sight lines appear acceptable and the planning authority had no issues with the proposed development in this regard.

8.6. Flooding

There are no indications that the site is subject to flood impacts, although I note the extensive area of hardstanding is likely to significantly increase discharges to the watercourse along the road during heavy rain events.

8.7. EIAR

Having regard to nature of the development comprising relatively minor scaled works within an established developed site, 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.

8.8. Appropriate Assessment

The appeal site is approximately 4 km west of the Cork Harbour Estuary, which is designated both SAC and SPA for its value for habitats associated with tidal mudflats and related avian life - Cork Harbour SPA site code 004030 and the Great Island Channel SAC site code 001058 - both designated areas cover much of the mudflats and tidal grasslands of the estuary up to the high tide mark.

The planning authority carried out an Appropriate Assessment Screening and considered that it would not have a significant effect on those or other designated sites. I would note that at least one of the questions in 'Section 3' of the screening appears to be inaccurate - contrary to what is stated there is a clear surface water linkage to an SAC and SPA – the site appears to be within the catchment of watersheds draining west to the Harbour. However, having regard to the nature and small scale of the works and the significant attenuation distance between the site and the estuary, I would concur with the conclusion.

I therefore consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Cork Harbour SPA site code

004030 or the Great Island Channel SAC site code 001058 or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.9. Other issues

There are no recorded ancient monuments or structures on the NIAH in the vicinity, or any other features of particular environmental sensitivity. I do not consider that there are other planning issues raised in this appeal. The planning authority did not consider that the works come within the Development Contribution Scheme and did not require another type of development contribution or bond.

9.0 Recommendation

Having regard to the proximity of the industrial unit to an established dwelling, I recommend that the proposed retention of the industrial unit be refused planning permission for the following reasons and considerations

10.0 Reasons and Considerations

Having regard to the close proximity of the industrial unit to a dwelling in this rural area and to the nature of the industrial operations carried within the unit, it is considered that the proposed retention of this industrial unit would seriously injure the residential amenities of this rural area and would thus be contrary to the proper planning and sustainable development of the area.

Philip Davis
Planning Inspector

3rd December 2018

