



An
Bord
Pleanála

Inspector's Report 302716-18.

Development

Retention of development to enhance security of farm yard and sustain food packaging business into the future. Planning retention sought for inner security gate and fence, and car parking area, and permission sought for surfacing, drainage and associated site works.

Location

Belinstown, Ballyboughal, Co Dublin.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F 18A/0417.

Applicant(s)

James Nugent.

Type of Application

Permission and retention permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party v Refusal.

Appellant(s)

James Nugent.

Observer(s)

Charlotte Kelly.

Date of Site Inspection

24 January 2019.

Inspector

Des Johnson.

1.0 Site Location and Description

- 1.1. The site is located in Belinstown, approximately 1.7km south of Ballyboughal, Co. Dublin, and on the eastern side of the R108.
- 1.2. The appeal site, as outlined in red on the submitted drawing JN-011, comprises two parts. The first is a 'T' shaped plot incorporating part of an existing concrete, entrance roadway, fencing and sliding gate, and the second is a larger roughly rectangular shaped hardcore plot, currently used for parking.
- 1.3. Adjacent to the east of the car parking area, there are three sizable units (warehouse type in appearance). The first of these units, adjacent to the car parking area, appears to incorporate a cold storage unit. The second unit stored a significant number of large wooden crates, and the third unit appeared unfinished but stored a small number of crates. To the side of these units there were other wooden crates stored, at least some of which appeared to contain fresh vegetables. Adjoining to the south there is a gated residence and to the south of this is a premises occupied by Aramax.
- 1.4. Approximately 100 metres to the south along the R108 there is a vegetable processing unit set back from the public road. I noted fresh vegetables stored in crates on shelving in this building. My inspection of the first floor of this building was restricted to a room storing boots and clothing for employees.
- 1.5. The R108 has a carriageway of approximately 6 metres, continuous white line and no public lighting or footpaths along this stretch.
- 1.6. I attach photographs taken at the time of inspection.

2.0 Proposed Development

- 2.1. Retention permission is sought for inner security gate and fencing and car parking area with 31 spaces. Permission is sought for surfacing, drainage and associated works. It is stated that the retention of development is to enhance security of a farm yard and to sustain a food packaging business.

- 2.2. The site area is stated to be 0.0879 hectares. This comprises two separate parcels of land adjacent to each other, referred to as part of a “fragmented farm”.
- 2.3. The application documents state that the site has been the subject of alleged unauthorised development and enforcement action. An Enforcement Notice, dated 3 July 2017 requires works to be carried out.
- 2.4. The packaging and distribution business is stated to be ancillary to farming activities.
- 2.5. The application is accompanied by an Engineering Service Report (Cronin & Sutton Consulting Engineers). This states that the inner gate is required to ensure no traffic hazards occur in relation to access. Fencing offer security between the main gate and inner gate and an open field. Parking has been ongoing for a number of years.

3.0 **Planning Authority Decision**

3.1. **Decision**

Refuse permission and retention for 4 reasons, summarised as follows:

1. Material contravention of a development objective included in the Development Plan
2. Separation of car parking from the location where the staff to be served are employed requires staff to walk along the public road (R108) where there is no footpath. Endanger public safety by reason of a traffic hazard.
3. Land use on the site is not agricultural and is commercial. The development would contravene materially a condition of an existing permission (Ref: F09A/0234) restricting the use of the entrance gate.
4. The proposed car park (31 spaces) would diminish the residential amenity of adjoining property to the south. The operation of the proposed electric gate would negatively impact on the residential amenity of the adjoining dwelling arising from noise generated. Depreciation in the value of property in the vicinity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It is evident that the structures on Site A are used for the storage of produce from outside the applicant's landholding/farm. Produce stored on Site A are processed on Site B. The uses of the lands are considered analogous with 'agribusiness' and this is a use class not permitted under the 'RU' zoning objective.

The use carried out on and within the structures on Site A are commercial in nature and, as such, the structures do not constitute 'exempted development'.

The retention permission for the main gate (Ref: F09A/0234) included a condition prohibiting commercial or other development without a prior grant of planning permission. The proposed development would contravene this condition.

The inner gate and security fencing do not give rise to negative impacts of the visual amenity or character of the area. The proposed car park and the proposed electric gate would diminish the residential amenity of adjoining property. There is insufficient information on which to determine if the proposed development would have a negative impact on a Natura 2000 Site (nearest being Rogerstown Estuary SAC and SPA located 5.3 km to the east).

Objection:

Submitted on behalf of Charlotte Kelly, Woodville, Belinstown, Ballyboughal and may be summarised as follows:

- Works which have been completed to date are unauthorised. No permission is evident for the initial development of the food processing and packaging business developed between 1972 and 1991. The proposal would result in the intensification of an unauthorised agri-business use on a site distinctly separated from the application site but under the same ownership.
- No information is submitted in relation to the proposed 'drainage' and 'surfacing'.
- The transport of food produce and waste material by forklift along the R108 approximately 20 times a day (including at night and in complete darkness is inherently unsafe and results in dangerous traffic problems.

- Diminution of the integrity of the rural landscape. Agri-business is not permitted within the 'RU' zoning objective.
- The mechanical nature of the heavy duty electronic security gate (operational as early as 04.15am until as late as 02.30am on weekdays) causes direct disturbance to residential amenity through noise pollution.
- The requirement for additional parking on Site A is associated with the recent expansion of the business including the development of 3 no. waste storage sheds removing this aspect of the food processing business from Site B and allowing further focus on food production on Site B.
- The public notice is incorrect. The existing use of the site is unrepresentative of a typical farm yard. The application does not relate to the retention of the 3 warehouse units and this should have been included. The site notice was incorrectly sited. The application is invalid.
- There is a vermin problem resulting from indiscriminate waste management on the site.
- The value of property will be seriously impacted by the proposed development

3.2.2. Other Technical Reports:

Transportation Planning Section: Due to lack of proper connectivity between Sites A and B and the resulting generation of business traffic and pedestrian movements between the two sites on a Regional Road (R108) permission should be refused on grounds of traffic hazard.

Irish Water: No objection subject to connection agreement.

4.0 Planning History

Appeal Site

F09A/0234 – Permission granted for retention of revised layout to agricultural, entrance including erection of steel sliding gate. Condition 4 requires the entrance to be used solely as an agricultural entrance and not facilitate access to commercial

development without a prior grant of permission. The site appears to correspond with part of the current appeal site.

Enforcement Notice 17/34A – This is not on file. The Planner’s report states that it pertains to the subject site. Enforcement files were opened in relation to the 3 no. shed structures (adjacent to the east of the current appeal site) between 2014 and 2015 (Enf. 14/103A and Enf. 15/153A). No application for the retention of these structures has yet been made.

Adjacent Site in same ownership

F05A/1399 – Permission granted for extension of existing one and a half storey low pitched canopy roof and side wall up to the front of existing warehouse at existing vegetable processing plant. Condition 2 restricts use to that of storage, preparation and consignment of vegetables and ancillary offices.

F03A/0680 – Permission granted for 2 storey extension to front, canopy etc at existing vegetable storage depot.

F95A/0927 – Permission granted for cold store building and biocycle unit, and open-sided extension to existing vegetable preparation building.

5.0 Policy Context

5.1. Development Plan

Fingal County Development Plan 2017-2023.

The site is in an area zoned ‘RU’ with the objective ‘to protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage’.

Within this zoning objective agricultural buildings are ‘permitted in principle’ and agribusiness is ‘not permitted’.

5.2. Natural Heritage Designations

Rogerstown Estuary SAC and SPA is located approximately 5.3 km to the east.

6.0 The Appeal

6.1. Grounds of Appeal

- The three structures referred to in Reason 1 are agricultural sheds and exempted development in the past. Recent correspondence requires “cease use of shed for storage of products in connection with business outside of this site”. The site and shed are an integral part of the business carried out on the overall landholding and ancillary to the existing agricultural business. This activity has been going on for more than 7 years.
- Employees are not forced to walk along the public road. There is a grass verge in excess of 3 metres in width between the two sites.
- The application is an attempt to regularise what was existing on the subject site. The inner gate is required for security while the main gate is open and to eliminate queuing on the R108 enhancing road safety.
- The adjoining property to the south is a commercial space – offices, within an industrial complex. Under Ref: F13A/0175 permission was granted for change of use from detached residential dwelling to an office ancillary to the permitted logistic complex use operated by Aramex Ireland Ltd. Condition 2 prohibits occupation for human habitation. A copy of this permission is attached to the grounds of appeal.
- Letters supporting the proposed development are submitted stating the First Party has supported family farming activities for significant periods of time and urging that permission be granted in the interest of protecting the economic development of rural business.

- The ultimate purpose of the appeal is to ensure security of the employment that currently exists emanating from the fresh produce packaging business. An unsuccessful appeal would put the jobs of 68 employees in jeopardy.

6.2. **Planning Authority Response**

The appeal documents do not alleviate issues raised in the refusal. The issue of residential amenity remains pertinent. The proposed development is analogous with 'agribusiness' and is not permitted under the zoning objective set for the area. The Board is urged to uphold the decision. If, however, permission is granted a Section 48 Financial Contribution should be required.

6.3. **Observations**

On behalf of Charlotte Kelly, Belinstown House, Ballyboughal,

- There would be significant loss of residential amenity and devaluation of property. The proposed development is inappropriate.
- The first party is arguing that large-scale unauthorised development of a non-conforming use should be approved on the basis of employment and economic development in an isolated rural location and on a site outside the application site. This is at odds with proper planning and sustainable development.
- There is a total disregard for pedestrian, vehicular and public safety.
- The land use is commercial and condition 4 of F09A/0234 is being contravened materially.
- The observer has lived in Woodville for in excess of 6 years and intends to continue residing there. The residential amenities should be protected.

6.4. **Further Responses**

None on file.

7.0 **Assessment**

Extent of application/appeal

I draw the Boards attention to the information contained in the application documents submitted to the planning authority. Drawing JN-011 details the site, in two portions of land, outlined in red. The 'Planning Statement' and 'Engineering Services Report' also submitted as part of the application documentation contain maps outlining two parcels of land outlined in red. The first (referred to as Site A) is for a significantly larger site, but including the site outlined in red on drawing JN-011, and the second parcel is a smaller rectangular shaped plot (referred to as Site B) approximately 100 metres south of Site A on which there is a vegetable processing business. I submit that the public newspaper notice and the planning application form clearly refer to the site outlined in red (in two portions) on drawing JN-011. The planning application form refers to a site area of 0.0879 hectares and the public newspaper notice refers to the "elements" of the development, all of which are contained within that site.

The proposal under appeal is for the retention of the following elements:

- Inner security gate
- Inner security fencing
- Car parking area with 31 spaces

and permission for the following elements:

- Surfacing
- Drainage
- All associated site works.

The public notice also refers to permission being sought for retention of development "to enhance security for our farm yard and sustain our food packaging business into the future".

Key Issues

Key issues in this appeal are this raised in the reasons for refusal as follows:

- Residential amenity
- Material contravention of a condition of a previous permission F09A/0234
- Endanger public safety by reason of traffic hazard

- Planning status of associated 3 structures and material contravention of zoning objective

I address each of these in turn.

Residential amenity

Having regard to the pattern of development in the vicinity, including Aramex logistic complex and the vegetable processing plant and the activities that these generate, and to the nature and scale of the proposal, I consider that the proposed development would not be seriously injurious to the amenities of residential property in the vicinity.

Material Contravention of previous permission

Permission was granted in May 2009 under Reg Ref. F09A/0234 for the retention of revised layout to agricultural entrance including erection of steel sliding gate and block wall at this location. Condition 4 of this permission restricts the use to an agricultural entrance without a prior grant of planning permission. "Agriculture" is defined in section 2 of the Planning Act as "includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock ... the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly". The current proposal, includes the retention of a car park with 31 spaces primarily serving employees working off this site and using the access permitted under F09A/0234. Reason 3 for refusal states that the use of Site A is agribusiness and that the proposed development is in contravention materially with the terms of condition 4.

In my view, as only portion of the access road forms part of the appeal site (half the width of the access road and a small section where the security gate is located), and having regard to recommended reason 1 for refusal, it is unnecessary that the planning authority's reason 3 for refusal be repeated in any decision by the Board

Public Safety

Along this stretch the R108 has a carriageway of approximately 6 metres with a continuous white line along the centre (except for the short stretch along the entrance to Aramex and the adjoining vegetable processing plant where the line is

broken), no footpaths and no public lighting. There is a grass verge along the frontage of the adjoining property to the south; this is interrupted by a splayed entrance with low wing walls. The grass verge extends as far as the entrance to the Aramax site goods entrance. Employees using the proposed car park walk this stretch to the vegetable processing plant. The First Party contend that employees walk along the grass verge between the two sites (approximately 100 metres) and are not endangering themselves. On this issue I agree with the conclusion of the planning authority that the proposed development generating pedestrian movements along this stretch of the R108 would endanger public safety by reason of a traffic hazard.

Planning Status/Zoning Objective

The First Party argues that the appeal site forms part of a “fragmented farm” at this location and, as such, the appeal site lands are in agricultural use. It is also contended that the three structures constructed on adjacent lands to the east of the car park are agricultural and, as such, are exempted development. The planning authority states that the planning status of the three structures is “unclear”. There is no record of any section 5 referral being made in respect of these structures.

While the adjoining lands to the north (remainder of Site A as indicated in the planning statement submitted with the application) appear to be in agricultural use, these lands are limited in area. There is information submitted which indicates that the applicant purchases products from other farmers in the area, there is evidence of crates of vegetables being stored in and adjacent to the structures to the east of the appeal site, and one of these structures appears to be used for cold storage. Based on the above, I am not satisfied that the activities described fall within the definition of agriculture as defined in the Act.

The First Party states that this activity has been ongoing for more than 7 years. The observer claims that development of Site A began in early 2015, and the planning authority has stated concerns regarding the planning status of the structures on Site A and adjacent to the appeal site. Based on the information on file, I conclude that there is no planning authorisation for these adjacent structures and no section 5 referral or declaration has been made in relation to them. I am not satisfied that the

development proposed for retention would not facilitate the unauthorised use of these structures and immediately adjoining lands.

Appropriate Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, 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.

EIA

Based on a preliminary examination of the nature, size or location of the proposed development there is no real likelihood of significant effects on the environment.

8.0 **Recommendation**

8.1. I recommend that planning permission be refused.

9.0 Reasons

1. The Board is not satisfied, based on the information submitted with the application to the planning authority and the Board on appeal, observations made at the time of inspection and the definition of “agriculture” as provided in section 2 of the Planning and Development Act 2000, as amended, that the development proposed for retention, would not facilitate the unauthorised use of land and structures on adjacent lands to the east of the site and within the applicant’s ownership. Accordingly, it is considered that it would be inappropriate to consider the grant of permission for retention in such circumstances.
2. The car park proposed for retention is located c.100 metres from the location where the staff who it is to serve are employed and would entail employees having to walk between the two sites along a regional road (R108) where there are no footpaths in place. This would endanger public safety by reason of traffic hazard.

Des Johnson
Planning Inspector

30 January 2019