



An
Bord
Pleanála

Inspector's Report ABP 303845-19.

Development	Retention of agricultural storage shed, and associated site works.
Location	Kiltrellig, Kilbaha, Kilrush, Co. Clare.
Planning Authority	Clare County Council
P. A. Reg. Ref.	18 977
Applicant(s)	Eoin Gibson
Type of Application	Permission for Retention
Decision	Grant Permission for Retention
Type of Appeal	Third Party
Appellant	Margaret and Henry Kennaugh.
Date of Site Inspection	May, 2019
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The site is located to the south of the R487 a short distance from Kilbaha on the Loop Head peninsula in south west County Clare.
- 1.1.1. There is a dwelling located at the road frontage, to the rear of which there is hardstanding and agricultural buildings and sheds. At the inspection that the area in use as the yard in which buildings and sheds and storage are located appeared to have been extended into the adjoining farmlands over time. The shed subject of the application for permission for retention is well set back from the road to the rear of the existing buildings.
- 1.1.2. There is a farm track and entrance at the north eastern end of the farmyard frontage, a gated entrance to the south west side of the dwelling. The entrance, the retention and completion of which is subject of the concurrent application and appeal is to the south west side of the existing entrance which opens onto the farmyard. (PL 303835 refers.)
- 1.1.3. A single storey dwelling, a farmyard and sheds are also located opposite, on the other side of the R487 to which there is direct access from the road frontage.
- 1.1.4. The landscape is an open rural coastal landscape which is relatively flat. Along the R487 as far as Kilkee there are farm buildings, cottages and single road frontage one and two storey dwellings of relatively recent construction. From the area in which the site is located there are views towards Kilbaha Bay.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for permission for retention of the dark grey metal clad agricultural storage shed which has a stated floor area of 252 square metres on the site.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 31st January, 2019 the planning authority decided to grant permission for retention subject to conditions.

Condition No 2 contains a requirement whereby use of the structure is confined to storage of agricultural goods and machinery used for agricultural purposes on the applicant's farm, excluding animal housing.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer in his report notes:

- The objections of the third party. (See para 3.2.2 below.)
- the policy 13.2 within the CDP which is to permit development in areas designated as settled landscapes that sustain and enhance quality of life, residential amenity and economic activity subject to minimisation of visual impact and intrusion of scenic routes, ridge and shorelines through appropriate site selection and design. The designated "heritage landscape" on lands adjoining the site area.
- Policy 13.7 within the CDP for designated scenic routes providing for protection of sensitive areas, views from the public road towards scenic features and areas and the requirement for development to be appropriate in location, design, finishes and landscaping.
- that the proposed shed along with the existing structures forms a collection of structures in the farmyard, that it is modest in size and appropriate in design, size and form within a farm complex.

He concludes that the proposed development does not have adverse negative impact on the visual amenities of the area. He also recommends the inclusion of a condition for restriction of the use to agricultural related purposes.

3.2.2. Third Party Observations

In the submission from the Observer Party objections include concerns about adverse visual impact, nature of use and, potential precedent for further similar development. Further details are available under The Appeal (Section 6 below.)

4.0 Planning History

- 4.1. **P. A. Reg. Ref. 18/978/ PL 303385:** is a concurrent application and appeal before the Board which is for permission for retention of an agricultural entrance and permission to alter and widen it to include splayed wing walls and a gate and associated site works.
- 4.2. **P. A. Reg. Ref. 15/501/ PL 245604:** The planning authority decision to grant permission for retention of a steel frame and timber purlins for an agricultural storage shed and permission for completion was overturned following third party appeal based on the following reason:

“The subject site is located within a sensitive, open and exposed landscape, on a designated scenic route on the Loop Head peninsula, and adjacent to a designated Heritage landscape. It is considered that the agricultural need for the scale and extent of the development proposed to be retained and completed has not been demonstrated in terms of serving this landholding, and having regard to its height, bulk and mass, it is therefore considered that in the absence of such justification the development would seriously injure the visual amenities of this area, would interfere with the character of the landscape which it is necessary to preserve, and accordingly would contravene Objective 16.6 (scenic routes) of the Clare County Development Plan 2011 – 2017, as varied, which seeks to protect sensitive areas from inappropriate development. The development proposed to be retained and completed would, therefore, be contrary to the proper planning and development of the area.”

RL 3513/ P. A. Reg. Ref. 16 73: Further to Referral of a Section 5 Declaration issued by the planning authority, the Board determined that:

- (a) the construction of an agricultural shed in excess of 300 square metres (in area), located on a sensitive open and exposed landscape on a designated scenic route on the Loop Head peninsula and adjacent to a designated Heritage Landscape is development is not exempted development and,
- (b) the said access to the shed via an entrance from the R 487 at Kiltrellig, Kilbaha is development is and is not exempt development.

- 4.3. There are prior successful applications for permission for livestock housing, details of which are in the planning officer's report. (P. A. Reg. Refs 08/1197, 02/1183 and 97/163 refer.)
- 4.4. The planning officer in his report also notes an application by Peter Gibson for an agricultural slatted cubicle unit on lands circa fifty metres to the north of the application site at an existing farmyard complex.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan is the Clare County Development Plan, 2017-2023.
- 5.1.2. The site location is within an a "Settled Landscape" and according to Objective 13.2, it is the policy of the planning authority to permit development in 'settled landscapes':
- that sustain and enhance quality of life and residential amenity and which promotes economic activity subject to conformity with the CDP provisions,
 - that has appropriate site selection with regard to landscape, minimisation of visual impacts and avoidance of intrusion on scenic routes, ridges or shore lines.
 - that demonstrates avoidance of selection of prominent site locations, to avail of existing topography and vegetation in reducing viability from walking trails, water bodies and public amenities and roads and
 - that has design that reduces visual impact by careful choice of form finishes and colours and involves site works that reduces visual impact.
- 5.1.3. The R 487 is a designated Scenic Route (No7) According to Section 13.7 it is an objective of Clare County Council:
- a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;
 - b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;

c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

5.1.4. Guidance and standards for development proposals for provision for sightlines at entrances are provided in Appendix 1. (A1 1.9.2) Guidance and standards for agricultural development are provided in Appendix 1 A1.11 Guidance and standards for development proposals on designated for Scenic Routes are in Appendix 5.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was received from Downey Planning on behalf of the appellant on 27th February, 2019. The appellant property is to the west of the application site, but the main place of residence is on the Ilse of Mann. The appeal is considerable in length and includes copies of folio documentation, Copy of A Section 5 Declaration (Reg. Ref. R16/073. PL RL 3513), and a copy of technical drawings to indicate obstruction of sightlines from setbacks of 2.4 and 2 metres at the entrance by NRB Consulting Engineers in connection with the current application, with reference to the prior Section 5 Declaration request under P. A. Reg. Ref. 16 -73 / RL3513. The appeal also contains an extensive account of the enforcement history and the involvement and the frustrations of the appellant party in this regard.

6.1.2. According to the appeal:

- The applicant has undertaken extensive unauthorised works and continues to maintain that the shed is exempt development whereas it has been confirmed that it is restricted Under Article 9 (1) of the Planning and Development Regulations, 2001-2018 (The Regulations) due to interference with the character of a landscape, view or a prospect of special amenity value or special interest the preservation of which is an objective of the Development plan for the area. The Warning Letter was issued to him four years ago. The applicant should be required to demolish the structure. Cognisance should be taken of the precedent set by the ruling *Wicklow County Council v Kinsella* ([2015] IEHC 229 in which demolition of a wooden chalet was ordered. To permit the development would set undesirable precedent.

- The applicant does not comply with the requirements of Article 22 of the Regulations especially as the applicant is not the legal owner of the land. The entirety of the lands is in the ownership of Mary and John Gibson as shown on the prior applications under P. A. Reg.Ref.08/1197 and details were not included in the current application these lands are now (Article 22 (2) (b) (ii) refers.
- The application is deficient in detail especially given the exposed landscape. It lacks information on how the shed is utilised, as to the produce stored in the shed or any justification for the stated use of the shed for storage of farm machinery, which it is contended is located in the farmyard and not in the shed. There is no information on the amount and type of vehicles entering and exiting the existing unauthorised entrance which has been in place for fifteen years, and which serves the structure. It is the appellant's contention that the shed is used for storage of commercial machinery in connection with the applicant's contracting and plant hire business which has no connection with the farm holding and that photographs provided by the planning authority confirm this contention. No justification is available in the application for the use.
- Due to provision of incorrect information by the applicant there have also been inconsistencies as to the size of the structure with reference to prior applications and the Section 5 request for a Declaration. The open storage area around the shed has expanded during the past four years and the farmyard has also expanded and this impacts visually on the landscape. The current application, by the applicant's brother for an additional storage shed under P. A. 19/27 is also indicative of intensification and development pressure at the farmyard with consequence for visual impact and traffic impact assessment.
- The proposed development materially contravenes the CDP. It is visually dominant on the sensitive open and exposed landscape on the designated scenic route. Permission should be refused because the structure is clearly visible on a designated scenic route and therefore materially contravenes Objective 13.7 of the CDP regarding protected views and scenic routes as

was previously confirmed in the reasons and considerations for refusal of permission under P. A. Reg. Ref. 15/501 PL 245604 or issues raised in the assessment of the Section 5 Declaration request. There is no consideration of alternative locations, no planting of shrubbery to reduce the impact and there are no changes to the structure that address the prior reason for refusal of permission except that the shed is smaller but the bulk and mass is not materially altered, and the height is still 7.4 metres. There is no justification for the retention of the shed at the subject location. The adjacent plastic covered silage slab provides no justification.

- Other locations on the landholding can be considered. The lands also adjoin the area designated as a Heritage Landscape. It is not demonstrated that the development proposal demonstrates minimisation of visual impact in accordance with the requirements of CDP Objective 13.5 for Heritage Landscapes.
- Consideration should also be given to the cumulative impact of the storage shed and the visual impact of the unauthorised entrance with steel cantilever gate subject of the concurrent application.
- Permission should be refused on grounds of endangerment of public safety by reason of traffic hazard due to inability to provide for a safe entrance. The unauthorised access subject of the separate concurrent application which is being used for access represents traffic hazard as the visibility splays and sightlines cannot be achieved. It has previously been determined that the entrance is a traffic and safety hazard, as confirmed by the appellant's engineers. Permission for retention of the storage shed cannot be granted if there is no safe entrance to the lands.
- There is insufficient detail in the application, but it is demonstrated in the attached drawings prepared on behalf of the appellant that visibility at the entrance is obstructed by a utility pole, boundary walls and gardens at the appellant property and that sightlines are therefore deficient in both horizontal and vertical alignment. For turning movements vehicles must turn left and turn at a disused site two hundred metres to the west and turn back to travel east. Reversing on to the public road is not acceptable. There is established

precedent for refusal of permission for development without safe access in respect of a proposal for construction of two cottages. (P. A. Reg. Ref. 08/555 refers.).

- There is a requirement for appropriate assessment screening report to have been provided. Owing to cumulative impacts of agricultural storage and other on-site activities. Screening is required under CDP Objective 14.3. The lodgement of the two separate applications also amount to project splitting.

6.2. Applicant Response

6.2.1. A submission was received from the applicant's agent on 1st April, 2019 attached to which is a copy of the response to the concurrent third-party appeal against the decision to grant permission for the retention of the existing entrance and for permission for alterations and widening of the entrance. (PL 303835 refers.). It includes a description of the planning context in which reference is made to the rebuttal of the appeal under PL 303835.

6.2.2. It is stated that the proposed shed is much smaller, at 267 square metres in floor area relative to the shed subject of the previous proposal under P. A. Reg. Ref. 15/501 the stated floor area of which was 752 square metres. It is therefore a materially different proposal and is to be used for a justifiable need of the farm operation of over one hundred hectares which is storage of farm machinery and equipment related to the farm operational requirements and access is facilitated by its position south of and close to the cluster of existing structures. It does not make sense to place it anywhere on the farm as contended in the appeal.

6.2.3. The rebuttal of the appeal is outlined in brief below:

- The proposed development complies with Policy Objectives 13.2 and 13.7 of CDP relating to designated scenic routes and landscape character areas.
 - The site and farm complex are not within a designated Heritage Landscape which covers the coastal area. It is excluded because it is a less sensitive and more robust landscape within a "Settled Landscape" which has greater carrying capacity. The development which is of a nature on which the rural economy is dependant, and which is supported under Policy Objective 13.2 of CDP the rationale for which is to sustain

and enhance rural life and economy and is more readily accepted within a “Settled Landscape”.

- The effects of visual impact on designated scenic routes is dependant on matters such as capacity of the landscape to absorb visual change. The area along the scenic route of circa twenty kilometres on the R487 between Kilkee and Kilbaha is characterised by a working rural environment of farm complexes, wind turbines, rural enterprise and cables and the working port of Shannon Estuary in the distance. There is an open landscape close to the site location there are historic field boundaries defined by hedgerow and stone walls which have limited capacity to offer visual screening, so farm buildings are visually conspicuous in the peninsula.
- The proposed development is therefore not dissimilar or incongruous relative to the established land-use, activity and amenity value and character of the scenic route even though it is clearly visible and high. It is a natural assimilation into the landscape as part of the farmstead complex. The scenic route is defined by the entire route around the Loop Head as part of the Wild Atlantic Way. There is no significant adverse visual impact.
- The appellant submission contains illustrations that are not representative of the proposed development and it is submitted that they should not be taken as a material consideration.
- It is submitted that the following matter raised in the appeal are not material to the determination of the decision on the current proposal:
 - The Section 5 Referral case on which the appellant places considerable emphasis is irrelevant and immaterial as the function was solely to determine if the larger shed required planning permission.
 - An Appropriate Assessment Screening report was not included in the application as it is not a requirement and the planning authority undertook a screening assessment concluding that appropriate assessment is not required.

- The claims in the appeal regarding unauthorised development at the site along with the references to legal cases are unjustified and irrelevant. The applicant is making a concerted and material effort to address and regularise planning matters.
- With regard to the access arrangements for the shed, reference is made to the planning status of the existing entrance and the proposal to widen and upgrade it under the concurrent application and appeal. It is submitted that while the shed is not dependant on the proposed entrance, (which is also not reliant on third party lands) the entrance would clearly would benefit the proposed shed.

6.3. Planning Authority Response

- 6.4. A submission was received from the planning authority on 29th March, 2019 in which it is confirmed that the proposed development is considered acceptable by the planning authority.

7.0 Assessment

- 7.1. The appeals against the decisions to grant permission and permission for retention for the current application and concurrent application relating to the proposed entrance under P. A. Reg. 189 78/PL 303835 are clearly distinct but there is some overlap in the issues raised.
- 7.2. The contentions in the appeal about validity, and unauthorised development are briefly addressed first below under, "Ownership and Title" and "Unauthorised Development". The planning issues raised in the appeal central to the determination of the decision on the proposed retention of the agricultural storage are then considered followed by environmental impact assessment and appropriate assessment considerations. They are:

Nature of use and Intensity of Use.

Impact on visual amenities and landscape character of the area.

Impact on the Designated Scenic Route, R487.

Vehicular and Pedestrian Safety and Convenience.

Impact on residential amenities.
Environmental Impact Assessment
Appropriate Assessment

7.3. Ownership and Title.

7.3.1. The appellant asserts that the applicant does not have the legal interest that entitles him to lodge the application and that the application is therefore invalid. It is claimed that Mary and John Gibson who submitted the prior application and section 5 Declaration request are the Title holders. It is noted that the planning authority is satisfied as to the validity of the application and it is also noted that the landholding is a family landholding and that the applicant's parents and siblings reside in the immediate vicinity. A grant of permission, as provided for under section 34.13 of the Planning and Development Act, 2000, as amended, does not incorporate an entitlement to implement a grant of permission. It would be open to the appellant party to seek resolution of the matter through the legal system.

7.4. Unauthorised Use.

7.4.1. There is considerable emphasis within the appeal on the contention that the nature of use at the application site is not confined to use related to agriculture and that the site is in unauthorised commercial use that is intensified and exacerbated by the proposed development. Follow-up on contentions as to unauthorised commercial use unrelated to the farm holding and possible investigation would be a matter for the planning authority within its remit relating to enforcement.

7.5. Nature and Intensity of Use.

7.5.1. It was noted in the course of the inspection, that that the use of the farm yard area, which appears to have been expanded into the adjoining agricultural lands over time is significant. The existing structures and open area were in use for storage of machinery, materials and equipment and the slatted shed was occupied by livestock. Having regard to the CDP policy objectives for designated "Settled Landscapes" which provide for support for development of development which enhances the quality of life, residential amenity and economic activity, it is considered that subject to satisfaction of all other relevant planning criteria the proposed retention of the shed is acceptable. However, it is agreed with the planning officer that of a condition

for restriction of the use to agricultural related purposes should be included if permission is granted.

7.6. Impact on visual amenities and landscape character of the area.

- 7.6.1. The landscape is a rural coastal landscape where natural screening through trees and hedgerow is scarce and where the level is relatively flat resulting in it being open and exposed and open to views over significant distances. Within it there are farm houses, farm buildings and complexes and single houses at most of which are at relatively frequent intervals along and adjacent to the frontage of the R487.
- 7.6.2. The designation as a “Settled Landscape” is indicative of a carrying capacity for some appropriate development in the landscape and provides for a reasonable balance between providing for the enhancement of the local rural economy and protection of the visual amenities and landscape character. The more sensitive designation applies to lands a short distance to the south. In spite of the relative height of the shed, the retention of which is proposed, it is a relatively insignificant insertion into the landscape and, although setback and positioned behind the existing structures within the farmyard it is identifiable as part of the cluster of farm buildings within the complex, is not unduly large and is suitable in colours and finishes. It is considered that presence of the shed in the landscape does not alter the landscape character or adversely affect the visual amenities of the area.

7.7. Impact on the Designated Scenic Route, R487.

- 7.7.1. On approach from either direction along the R487 the views towards the structure are limited or completely absent due to obstruction by the existing structures in that the shed is obstructed. It is concluded, that any views towards the coast are not unduly interrupted or adversely affected. The significance is also ameliorated. Furthermore, farm complexes are interspersed along the roadside at relatively frequent intervals in the views from the R487 over most of the distance between and Kilkee to the north east and the site location and this further ameliorates possible perceived negative impact of the shed in views from the designated scenic route and the proposed development is considered acceptable in this regard.

7.8. Vehicular and Pedestrian Safety and Convenience.

- 7.8.1. Whereas vision in each direction along the R487 in each direction is relatively unobstructed, due to good alignment, the carriageway width is restricted, there being

a single unbroken white line along the centre. In addition to the entrance subject of the application, there is the original entrance which is stated to be unused and a further entrance at the northern end of the site frontage and a pull in space in front of the dwelling. There is also an entrance to the dwelling and to the farmyard buildings opposite the site and another minor road directly opposite the entrance subject of the concurrent application. It is agreed with the Appellant that frequent use of the entrance by large vehicles of a commercial or industrial nature, if reliant on the public road space for turning, is unacceptable for reasons of obstruction of the safe and free flow of traffic on the regional route and vehicular and pedestrian safety. However, the proposed shed, if the intended use is for agricultural storage purposes directly in connection with the farming operation, additional trip generation to that generated by the existing authorised development within the farmyard may be relatively insignificant.

7.9. Impact on residential amenities.

- 7.9.1. The appellant party's property is located a short distance to the south west of the site of the proposed development. It is apparent that the farmyard space has expanded and overlapped into adjoining fields to which the proposed shed for retention is a further addition. The use of machinery, storage and existing slatted shed as animal housing may impact somewhat on the amenities of the appellant's property but it is not accepted that the proposed shed for retention would cause a significant increase in adverse impact. In so far as the activities at the farmyard are related to the agricultural related operation of the applicant's farm holding the activities and associated noise and odours and views from residential properties are regarded as acceptable in a rural location. It is not reasonable the extent and scope for protection of residential amenities should be comparable to those which might be expected for dwellings within residential areas in urban locations.

7.10. Environmental Impact Assessment.

- 7.10.1. Having regard to the scale and nature of the proposed development the use of which is confined to storage purposes and the location of which is at the existing farmyard removed from any sensitive locations or features, there is no real likelihood of significant adverse effects on the environment. The need for environmental impact

assessment can therefore be excluded at preliminary examination and a screening determination is not required.

7.11. Appropriate Assessment.

- 7.11.1. Having regard to the scale and nature of the proposed development the use of which is confined to storage purposes and the location of which at the existing farmyard complex and removed from European Sites no Appropriate Assessment issues arise. The proposed development would not 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. In view of the foregoing, it is recommended that permission for retention be granted and that the appeal be rejected.

9.0 Reasons and Considerations

- 9.1. Having regard to the location within a rural, relatively flat coastal area in the Loop Head peninsula in which farm building complexes and dwellings are characteristic features in the open and exposed landscape which is designated as “settled landscape”; to the position of the shed which is setback at the rear of the farmyard on the north east side of the R487 which is designated as a scenic landscape within the Clare County Development Plan, 2017-.2023; to the size, height, form, external finishes and colours of the proposed shed, and to the use for agricultural storage purposes; it is considered that the proposed development for retention, would not be visually intrusive in the landscape, would not interfere with the protected views from the R 487, a designated scenic route would be acceptable in terms of traffic safety and convenience and would not seriously injure the residential amenities of adjoining properties or the amenities of the area and would be in accordance with the development objectives for the area in the Clare County Development Plan, 2017-.2023. The proposed development is therefore in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be in accordance with the plans and particulars lodged with the application on 29th November, 2018 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The use of the agricultural storage shed shall be confined to storage use connected with the agricultural use of the farm holding but shall not be used for animal housing. It shall not be used for commercial purposes, sublet or sold separately from the farm holding.

Reason: In the interest of clarity, consistency with the rural coastal location which is not zoned for development, the amenities of the area.

3. The external finishes shall be either black, dark grey, dark green or dark brown.

Reason: In the interest of the visual amenities of the area.

4. All surface water shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

Reason. In the interest of clarity and orderly development and the amenities of the area.

Jane Dennehy

Senior Planning Inspector
6th June, 2019.