



An  
Bord  
Pleanála

## Inspector's Report ABP-304035-19

### Development

(i) Retention of storage buildings for storage of machinery used in conjunction with agricultural contracting business and occasional storage of grain and straw, (ii) Retention of agricultural buildings, and (iii) Retention of raised/filled ground area of northwest and associated site works.

### Location

Dromsarane, Midleton, Co. Cork.

### Planning Authority

Cork County Council

### Planning Authority Reg. Ref.

18/6567

### Applicant(s)

Teddy Motherway

### Type of Application

Retention permission

### Planning Authority Decision

Grant, subject to 15 conditions

### Type of Appeal

Third Party -v- Decision

### Appellant(s)

Dan & Kay Murphy

### Observer(s)

None

**Date of Site Inspection**

15<sup>th</sup> August 2019

**Inspector**

Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located on the eastern side of Stacks Cross Road, a cross roads between the L3630 and Ballymaloe Road on the local road network to the SE of Midleton and the NE of Cloynes. This site lies in an area of rolling countryside within which tillage farming predominates. It also lies within the vicinity of several one-off dwelling houses.
- 1.2. The site itself is of irregular shape and it extends over an area of 1.34 hectares. This site wraps around a one-off dwelling house with a garage to the rear, which is served by a dedicated means of access. (The appellants reside in this dwelling house). To the north east of this residential property, beyond this means of access, lies the raised/filled area, which is the subject of the current application, and to the east lie the group of buildings, which are also the subject of this application. To the south west lies some unused land around the far perimeters of which runs the on-site access road. The gated entrance to this road is from Ballymaloe Road at the western extremity of the site.
- 1.3. The site boundaries are denoted by means of hedgerows, except for the boundaries with the aforementioned residential property, where to the north east of this property there is a timber post and rail fence and to the south east and south there is a blockwork wall.

## 2.0 Proposed Development

- 2.1. The proposal is for the retention of a group of buildings and raised/filled ground on the site. These buildings are sited in the eastern portion of the site and they are depicted on submitted shed floor plans (drawing no. TM-PP-02), which distinguish between ones that are in agricultural use and ones that are in commercial use, i.e. the applicant's agricultural contractor business.
  - The former buildings were built in 2002, 2009, and 2017 and they have a floorspace of 949.5 sqm. Typically, these buildings are used for the storage of agricultural machinery and the storage of grain and straw. (The applicant farms 64.75 hectares of land for tillage).

- The latter buildings were built in 1998, 2002, and 2009 and they have a floorspace of 815.2 sqm. Typically, these buildings are used for the storage and repair/maintenance of agricultural machinery.

2.2. The proposal is also for the retention of raised/filled ground on the site. This ground lies in the northern portion of the site between the Ballymaloe Road and the aforementioned group of buildings. It has a gravel surface and it is in use for the open storage of agricultural machinery.

2.3. Under further information, the applicant submitted proposals to enclose the majority of the boundaries to the raised/filled ground with a retaining wall and to install a land drain on the inside of this wall, which would discharge to a soakaway in the northern corner of the site. He also submitted proposals to alter the entrance to the site by re-siting it to the north east, thereby ensuring that the sightline to the south west would have a “y” distance of 90m prior to the above cited cross roads.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Following receipt of clarification of further information, permission granted subject to 15 conditions.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

Further information sought with respect to the following items:

- Details of measures to prevent surface water flowing onto adjacent laneways and the public road.
- Confirmation of means of access and attention to the provision of adequate sightlines at the point of access.
- Details of fill material to be provided.
- Submission of cross sections of the raised/filled ground area.

Clarification of this information was sought with respect to the submitted plans and the stated tonnages of material removed and the replacement material deposited.

### 3.2.2. Other Technical Reports

- NRO: Following receipt of further information, “no comments” reiterated.
- Area Engineer: Further information requested, no further comments forwarded thereafter.
- Environment: Following clarification of further information, conditions requested and, with respect to the subject of the said clarification, a recommendation that enforcement ensures that “there is no more waste material on site.”

## 4.0 Planning History

- EF 17/168: Re. unauthorised works.
- 17/6639: Retention of agricultural storage buildings and associated site works: Deemed invalid as it did not include a raised/filled area.

## 5.0 Policy and Context

### 5.1. Development Plan

Under the Cork County Development Plan 2014 – 2020 (CDP) and the East Cork Municipal District Local Area Plan 2017 (LAP), the site is shown as lying within a rural area that forms part of the Greater Cork Ring Strategic Planning Area.

### 5.2. Natural Heritage Designations

- Ballymacoda (Clonpriest and Pillmore) SAC and pNHA (site code 000077)
- Ballymacoda Bay SPA (site code 004023)
- Great Island Channel SAC ( site code
- Cork Harbour SPA (site code 004030)

### 5.3. EIA Screening

The proposal is not a development type that is subject to EIA.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Attention is drawn to the appellants residential property, which lies to the south west of the sheds and yard that are the subject of the application. The following grounds of appeal are cited:

- The sheds have been developed incrementally between 1998 and 2017. Shed “G” has an area of 474 sqm and a height of 8.27m. It lies 10.8m away from the nearest boundary with the appellant’s residential property. The resulting overlooking and loss of visual amenity are such that this Shed should either be reduced in height or setback further from the said boundary.
- The proposed retaining wall would be 1m high. However, no information has been submitted with respect to its height above adjacent ground level and the minimum freeboard that would be available during heavy rainfall.

Furthermore, no details are given of the proposed soakaway and none are conditioned. The design of this soakaway is critical against the backdrop of greatly reduced percolation since the yard was formed and the risk of surface water run-off onto the appellants residential property and the public road.

- The appellants have a drinking water well to the rear of their residential property that is c. 40m away from the centre of the raised/filled area. No further depositing of materials should be allowed in order to reduce the risk of water contamination.

### 6.2. Applicant Response

- The applicant explains that the size of Shed “G” reflects the larger combine harvesters that his agricultural contracting business now operates.

He alleges that the garage to the rear of the appellants' dwelling house maybe the subject of a commercial use in contravention of condition 3 attached to permitted application S/01/2544 and that upper floor windows have been inserted in either gable to this garage. Overlooking occurs from these unauthorised windows.

- The applicant states that the retaining wall would be 1.3m above adjacent ground level and that this height could be raised/lowered if the appellants so require.

The applicant invites the Board to attach a condition regarding the design of the proposed soakaway. He will ensure that no surface water from the site reaches the public road. In this respect, he alleges that surface water run-off onto this road does occur from the appellants unauthorised access point and driveway.

- The applicant states that the fill material in question is composed of soil and stone, with only a "minute content" of bitumen. In this respect, the chippings to the appellants own laneway maybe a greater water contamination risk. Furthermore, alleged waste water run-off from the appellants garage has posed a risk of contamination to the applicant's own water supply.

The applicant states that there will be no further depositing of material on his site.

### 6.3. **Planning Authority Response**

None

### 6.4. **Observations**

None

### 6.5. **Further Responses**

The appellants have responded to the applicant's response as follows:

- Supplementary photographs have been submitted that illustrate the impact upon visual amenity.



- The proposed 1.3m high wall is at variance with what is shown on the submitted plans. The appellants do not have an issue with this height *per se*, they only wish to be able to assess its visual impact from the perspective of their residential property.

The need for a properly designed soakaway is reiterated.

- Issue is taken with the description of the bitumen content as being “minute”. Thus, the presence of the same embedded within the site means that the risk of water contamination persists.

The applicant’s allegations with respect to unauthorised development are not relevant to the current proposal and so they can be addressed, as needs be, in another forum.

## 7.0 Assessment

7.1. I have reviewed the proposal in the light of the CDP/LAP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use and amenity,
- (ii) Traffic and access,
- (iii) Water, and
- (iv) Stage 1 Screening for AA.

### **(i) Land use and amenity**

7.2. The site lies within a rural area, within which tillage farming is widespread. The buildings on the site provide storage for both the applicant’s tillage farm and his agricultural contractor business. These buildings were constructed between 2002 and 2017 and they have a total floorspace of 1764.7 sqm. During my site visit, they were being used to store tractors, agricultural machinery, and a small amount of straw. The buildings denoted as Sheds A – D on drawing no. TM-PP-02 are used, too, for the repair and maintenance of machinery. The accompanying original yard comprises a hardstanding, for parking and manoeuvring within, and refuelling tanks.

- 7.3. Economy and Employment Objective 8-1 of the CDP addresses agriculture and farm diversification. Two of the four points set out under this Objective are set out below:
- *Encouraging the development of sustainable agriculture and infrastructure, including farm buildings, and*
  - *Encouraging farm diversification through the development of other sustainable business initiatives appropriate to the rural area.*
- 7.4. The subject buildings are used for storage in conjunction with the applicant's farm and agricultural contractor business. I consider that, in principle, these uses are appropriate to a rural area and so, by extension, are the buildings that serve them.
- 7.5. The appellants express concern over the impact upon their amenity of the said buildings and in particular the most recent of these, which was constructed in 2017, i.e. Shed G. This building is sited in a position between 10.8m and 16.8m from the north eastern boundary to their residential property. It is of "Dutch barn" form with a maximum height of 8.3m, which is slightly higher than the adjoining older sheds at 7.573m. The eaves height of this Shed is correspondingly higher, too. The applicant has explained that this increase in height is to facilitate the storage of new larger agricultural machinery.
- 7.6. The appellants are concerned that Shed G is both higher and closer to their residential property than the other sheds and so it is visible and thus affects their visual amenity.
- 7.7. During my site visit, I observed that the topmost portion of Shed G is visible from ground floor habitable room windows in the rear elevation of the appellants' dwelling house and from the rear garden to this dwelling house. A high conifer hedgerow abuts the nearside dedicated laneway to the appellants freestanding garage and it returns to enclose the rear garden to the south east. Thus, the north eastern and south eastern boundaries to the rear garden are enclosed thereby and so, as Shed G lies to the east, its visibility is limited. From the vicinity of the garage beyond the south eastern hedgerow, this Shed is more visible over a concrete block work wall. However, I gained the impression that, as the grounds around this garage are separate from the rear garden, they are less sensitive in amenity terms, e.g. they also accommodate a freestanding container and a hen coop.

- 7.8. During my site visit, I also observed that, notwithstanding the considerable scale of the combined group of buildings, which are the subject to the current proposal, their visibility within the surrounding expansive landscape is limited by the presence of mature hedgerows. Insofar as they are painted bottle green, their visual impact is muted. In this respect, cladding and tanks that are not so painted, stand out and so they should be conditioned to be painted bottle green, too.
- 7.9. The appellants are also concerned that their residential property is overlooked from within the site. However, I consider that the aforementioned hedgerows ensure that their dwelling house and rear garden are screened from the site and so they are not overlooked. By contrast, their garage, its grounds, and the dedicated laneway to it is overlooked to varying degrees. Nevertheless, insofar as these areas can reasonably be distinguished from the dwelling house and rear garden, I do not consider that residential amenity is jeopardised thereby.
- 7.10. I conclude that the proposal is, in principle, appropriate from a land use perspective and that, subject to the consistent use of bottle green paint, the subject buildings are compatible with the visual and residential amenities of the area.

**(ii) Traffic and access**

- 7.11. The proposal generates traffic. The applicant has not quantified traffic movements. Given the farming and agricultural contractor uses, I anticipate that there would be seasonal peaks and troughs in such movements.
- 7.12. The site is accessed off Ballymaloe Road, a local road that runs on a NE/SW axis as it passes the site. During my site visit, I gained the impression that this Road is lightly trafficked. It connects with Stack's Cross Roads to the south west where, due to the staggered configuration of this cross roads, the sightline to the north west is limited. In this respect, the elevated seating position of tractor drivers places them at an advantage over car drivers in seeking to safely negotiate the same.
- 7.13. Under further information, the applicant proposed an alteration to his existing site entrance in order to ensure that the available south western sightline would be of requisite length. The implementation of this alteration should be conditioned.
- 7.14. The appellants express concern about the condition of Ballymaloe Road, which they attribute to surface water run-off from the site. I will address this concern under the third heading of my assessment.

7.15. I conclude that the proposal generates traffic, which is capable of being accommodated on the local road network. Proposed alterations to the entrance would improve visibility for drivers exiting from the site.

**(iii) Water**

7.16. The completed application forms state that the site is served by a well and a soakaway. Plans submitted under further information and clarification of such information (drawing no. TM-FI-01) show that the most recent building, Shed G, would be served by two soakaways. During my site visit, I observed that down pipes have yet to be fitted to the north western elevation of this Shed. Likewise, I did not see any evidence of the installation of the said soakaways.

7.17. The aforementioned plans also show an interceptor drain and soakaway across the proposed altered site entrance and land drains alongside the proposed retaining walls to the perimeter of the raised/filled area, which would discharge to a soakaway in the northern corner of the site.

7.18. The appellants express concern that, with respect to the land drain soakaway, a detailed specification has not been provided. They emphasise the importance of ensuring that surface water run-off onto their laneway and Ballymaloe Road is avoided. The applicant has responded by stating that such a specification could be made the subject of a condition.

7.19. The appellants also express concern that the presence of bitumen within the imported materials used to raise the level of the new hardstanding poses a contamination risk to their well and, presumably, by extension the applicant's well and any other wells that may lie within the vicinity. The applicant has responded by insisting that the amount of bitumen is "minute", a description that is contested by the appellants.

7.20. I note that at the application stage, the Planning Authority's Environment consultee questioned the amount of material that had been imported to the site. I note, too, that the applicant responded, under clarification of further information, by reducing radically his depiction of the amount of imported material, i.e. from a depth of 500mm to a depth of 45mm (cf. cross section TM-FI-02 received on 18<sup>th</sup> December 2018 with cross section TM-FI-02 received on 31<sup>st</sup> January 2019).

- 7.21. The aforementioned cross sections also depict the amount of material removed as having variously a depth of 600mm and 60mm. A comparison of these before and after figures would suggest that rather than the area in question being raised it would have been lowered slightly in height. Yet, on site, the indications are that the site has been raised, although it is difficult to gauge by how much.
- 7.22. The Environment consultant identified a discrepancy between the receipts for imported soil/stone and bituminous material and the original cross section depiction. The applicant addressed this discrepancy by means of the revised cross section. The depths thus cited appear shallow for the provision of a hardstanding. Furthermore, the height query cited in the preceding paragraph remains outstanding and the proportions of soil/stone to bituminous material remain unspecified.
- 7.23. I recognise that bituminous material is a potential source of contaminants that are capable of being transported by rainwater into underlying groundwater. Good practice would thus normally require that an impermeable layer be superimposed underneath any bituminous material to mitigate against the contamination of groundwater. The applicant has not indicated that such measures were undertaken in this case and so a risk to local wells exists although, in the absence of information as to the amount and distribution of the said bituminous material and the exact locations and depths of wells in the vicinity, this is difficult to quantify.
- 7.24. The OPW's flood maps do not show any identified flood risk pertaining to the site or its surrounding area.
- 7.25. Condition 10 attached to the Planning Authority's draft permission requires that fuel tanks on the site be bunded. I concur with this requirement, which should be conditioned.
- 7.26. I conclude that, the applicant has failed to demonstrate that the presence of bituminous material in the raised/filled ground area would not pose a risk of water contamination to wells in the vicinity and so, in these circumstances, I consider that it would be premature to grant retention permission while this potential public health issue remains outstanding.

**(iv) Stage 1 Screening for AA**

- 7.27. The site is neither in nor near to a Natura 2000 site. I am not aware of any source/pathway/receptor route between this site and such sites in the wider area, i.e.

to the east, Ballymacoda (Clonpriest and Pillmore) SAC and Ballymacoda Bay SPA, and, to the west, Great Island Channel SAC and Cork Harbour SPA. I, therefore, consider that the proposal is not likely to have any significant effects on the Conservation Objectives of these Natura 2000 sites.

7.28. Having regard to the nature of the receiving environment and proximity to the nearest European sites, no Appropriate Assessment issues arise, and it is not considered that the proposal 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. That items (i) and (ii) of the proposal be permitted and item (iii) refused permission.

## 9.0 (i) Reasons and Considerations

Having regard to the Cork County Development Plan 2014 – 2020 and the East Cork Municipal District Local Area Plan 2017, the proposed retention of storage and agricultural buildings would, subject to conditions, be appropriate within the rural area of the site and it would accord with Objective EE 8-1 of the Development Plan, which encourages the development of agriculture within the County. These buildings would be compatible with the visual and residential amenities of the area. Traffic generated by their use would be capable of being accommodated on the local road network and proposed improvements to the site entrance would promote road safety. Surface water drainage arrangements are/would be satisfactory. No flood issues or Appropriate Assessment issues arise. The retention of the storage and agricultural buildings would thus accord with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 18 <sup>th</sup> day of December 2018 and on the 31 <sup>st</sup> day of January 2019, except as may otherwise be required
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	<p>in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Within 24 weeks of the date of this Order, the proposed alterations to the site entrance shown on drawing no. TM-FI-01 shall be fully implemented and, thereafter, the sightlines shall be retained free of any features greater than 1 metre in height for the duration of the development.</p> <p><b>Reason:</b> In order to promote road safety.</p>
3.	<p>Within 12 weeks of the date of this Order, the soakaways shown on drawing no. TM-FI-01 shall be installed.</p> <p><b>Reason:</b> In the interest of sustainable drainage.</p>
4.	<p>Within 12 weeks of the date of this Order, a scheme for the bunding of fuel tanks on the site shall be submitted to and agreed in writing with the Planning Authority and, thereafter, this scheme shall be fully implemented in accordance with a timetable set out therein.</p> <p><b>Reason:</b> In order to intercept spillages and avoid pollution.</p>
5.	<p>Within 12 weeks of the date of this Order, a scheme for painting the cladding of the buildings and the fuel tanks bottle green to match the use of this colour elsewhere on these buildings shall be submitted to and agreed in writing with the Planning Authority and, thereafter, this scheme shall be fully implemented in accordance with a timetable set out therein.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution of €13,304 (thirteen thousand three hundred and four euro) 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</p>

<p>Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within 4 weeks of the date of this Order 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. The application of any indexation required by this condition 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.</p> <p><b>Reason:</b> 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.</p>
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## 11.0 (ii) Reasons and Considerations

The applicant has failed to demonstrate that the presence of bituminous material within the raised/filled ground area does not pose a risk of water contamination to wells within the vicinity of this area and so to grant retention permission in circumstances when there may be a risk to public health would be premature and thus contrary to the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

21<sup>st</sup> August 2019