



An  
Bord  
Pleanála

## Inspector's Report ABP-304044-19

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<b>Development</b>	Retention of slatted cattle shed and permission for construction of a slatted cattle shed, concrete aprons and associated site works.
<b>Location</b>	Coolalug, Tinahely, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	18706.
<b>Applicants</b>	Samuel & Colin Horan.
<b>Type of Application</b>	Retention and Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party.
<b>Appellant</b>	Colette Kinlay.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	13 <sup>th</sup> June 2019.
<b>Inspector</b>	Dáire McDevitt.

## **1.0 Site Location and Description**

1.1 The appeal site is located in the townland of Coolalug in southern Co. Wicklow approximately 5km north-east of Tinahely and 7km south-west of Aughrim. The site fronts onto a local road which commences at a 'T' junction with the R747 approximately 100m south-east of the site. The R747 continues along the valley between Croghan Mountain and the southern foothills of the Wicklow Mountains. This road forms part of Holt's Way and there is a Prospect of Special Amenity Value or Special Interest in the vicinity of the appeal site. The area is characterised by farmland, mostly pasture, served by a network of third class roads with a number of houses clustered along this section of the L3604.

1.2 The appeal site, with an area of 0.732ha, is a small farm complex located to the rear of a two storey house (Horan family home) which fronts onto the L6304. There is an access to the farmyard along the side of this house. Part of the current application is to use an agricultural entrance located c.98m to the north of the entrance to the family home. The proposed entrance is setback from the road with a shared setback with the entrance to the house to the north of the Horan home adjoining a bridge. Access is via a c130m unsurfaced track.

1.1. The site is situated in an area of flat lands to the south-east of the Coolalug stream. The farmyard is visible along the R747 when approaching from the south-west. The site is exposed from the north, south and west.

## **2.0 Proposed Development**

2.1 Permission is sought for the retention of the existing slatted cattle shed (c.140.3sq.m). Permission is also sought to erect a slatted cattle shed (c. 740.8sq.m), concrete aprons and all associated site works within an existing farmyard with c.962sq.m of existing sheds.

### **2.2 Further Information (19<sup>th</sup> November 2018)**

This addressed issues relating to stock/number of livestock/slurry capacity, etc and use of the lean to.

### **2.3 Clarification of Further Information (13<sup>th</sup> February 2019).**

This clarified outstanding issues relating to stock/herd numbers/slurry capacity, etc and use of the lean to. Included with the response was an 'Odour Impact Assessment'

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to **grant** retention permission and permission subject to 8 no. conditions. Conditions of note include:

#### **No. 2**

*The shed identified as Shed No. 8 on the site layout plan submitted on the 26<sup>th</sup> June 2018 shall only be used for the storage of straw/hay, and on no account shall be used for the storage of animals.*

*Reason: In the interest of clarification and proper planning and sustainable development.*

#### **No. 3**

*The sod stone bank and planting proposals, as set out in the site layout plan submitted on the 26<sup>th</sup> June 2018, shall be carried out before or during the first planting season or part thereof occurring after the commencement of development. The new slatted cattle shed shall not be occupied by animals until such time as a report and photographs have been submitted to the Planning Authority for their written agreement, confirming that the bank and planting area in place as required by this condition.*

*Reason: In order to assimilate development on this site into the surrounding area, in the interests of visual amenity and proper planning and sustainable development.*

### **3.2 Planning Authority Reports**

#### **3.2.1 Planning Report (dated 7<sup>th</sup> August 2018, 5<sup>th</sup> December 2018 & 28<sup>th</sup> February 2019)**

- The proposed development relates to an expansion of an existing operating farmyard.
- The visual impact on protected prospect ID54 is acceptable as it relates to an existing farmyard
- The issues of smells and impact on adjoining properties was addressed and an Odour Impact Assessment submitted with the application concluded that the odour was faint and consistent at most locations.
- The proposed development would be an improvement both in terms of animal husbandry and the storage/agitation of slurries. Furthermore given the existing permitted sheds at this point, and the results of sniff tests which indicates that the current development, would not give rise to significant impacts.

Following a detailed Further Information and clarification of further information relating to livestock numbers, slurry generation, odours and the use of structures on site a recommendation to grant permission was made.

### **3.2.2 Other Technical Reports**

**Environment Section** (2<sup>nd</sup> August 2018, 29<sup>th</sup> November 2018 & 20<sup>th</sup> February 2019). It is noted that the proposed development would be located less than 100m to the south of Coolalug stream, forming part of the Derry Water Catchment which has a current WFD status of Moderate to Good.

Report from Dr. P. Lawrence of Teagasc noted which stated that the total existing organic waste storage volume is sufficient to cater for that produced by live stock during the most recent winter housing period in accordance with Article 9 & 13 of the European Union (Good Agricultural Practice for the Protection of Waters) Regulations.

No objection subject to conditions.

### **3.2. Prescribed Bodies**

**Irish Water** (3<sup>rd</sup> July 2018). No objection.

### 3.3. Third Party Observations

Two submissions received by the Planning Authority. This included one from the current appellant. The issues raised are broadly in line with the grounds of appeal and shall be dealt within in more detail in the relevant section of this report.

## 4.0 Planning History

### Farmyard:

**Planning Authority Reference No. 06/5910** refers to a grant of permission for an easy feed slatted unit, a loose cattle shed, a lean to shed, a concrete silage base and all associated works.

### Landholding:

**PA Reference No. 14/1142 (An Bord Pleanála Ref. No. PL.27.243822)** refers to a 2015 decision to refuse permission to **Colin Horan** for a house for the following reasons:

*1. Objective VP1 of the current Wicklow County Development Plan aims “to protect listed views and prospects from development that would either obstruct the views/prospect from the identified vantage point or form an obtrusive or incongruous feature in that view/prospect”. This objective is considered reasonable. The site lies in a rural area and within view of a Prospect of Special Amenity Value or Special Interest, as defined within the current Wicklow County Development Plan. It is considered that the proposed development, by reason of its two-storey nature, bulk, scale and height and its open and exposed location in the centre of the field would form an excessively prominent and obtrusive feature on the landscape that would seriously injure the visual amenities of this sensitive rural corridor. The proposed development would, therefore, set an undesirable precedent for similar type development and would be contrary to the proper planning and sustainable development of the area.*

*2. The proposed access would necessitate the removal of hedgerow and mature trees to facilitate the adequate sightlines and this would detract to an unacceptable degree from the rural character of the area. The proposed development would seriously injure the visual amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.*

**Planning Authority Reg. Ref: 10/3050** refers to an application by Colin Horan for a dwelling, car port, well, effluent treatment system, new entrance and associated works was withdrawn on 18<sup>th</sup> May 2011. The Case Planner had recommended refusal of this permission for reasons relating to wastewater treatment and disposal and the bulk, scale and design of the dwelling, the open and exposed nature of the site and its location along the listed prospect.

**Planning Authority Reg. Ref: 00/2596** refers to a 2000 decision to refuse Glen Boyd outline permission in June 2000 for 3 no. dwellings with biocycles. The reasons for refusal referred to sporadic development; interference with views/ prospects; excessive concentration of dwellings in an unserviced rural area; and public health.

**Planning Authority Reg. Ref: 00/3458** refers to a 2000 decision to refuse Glen Boyd outline permission again in December 2000 for 3 no. dwellings with biocycles for the same reasons.

#### **Enforcement**

**ENF UD3604** noted by the area planner, refers to the use of the yard for parking and storage of commercial trucks and trailer. Case Closed.

## **5.0 Policy & Context**

### **5.1. Wicklow County Development Plan 2016-2022**

Landscape Category: Rolling Lowlands.

Chapter 5 –Economic Development - Agriculture

**AGR1** To facilitate the development of environmentally sustainable agricultural activities, whereby watercourses, wildlife habitats, areas of ecological important and other environmental assets are protected from the threat of pollution, and where development does not impinge on the visual amenity of the countryside. Developments shall not be detrimental to archaeological and heritage features of importance.

**AGR4** To ensure that agricultural developments do not cause increased pollution to water course. Developments will be required to adhere to the Nitrates Directive (91/676/EC) and the EC (Good Agricultural Practice for Protection of Waters) Regulations.

**AGR5** To permit the development of new, appropriately located and designed agricultural buildings, which are necessary for the efficient and environmentally sound use of the agricultural practice. New buildings will generally only be permitted in cases where there are no suitable redundant buildings on the farm holding which would accommodate the development and where the Council is satisfied that the proposal is necessary for the efficient operation of the farm. Developments shall be compatible with the protection of rural amenities, and should not create a visual intrusion in the landscape or be the cause of an environmental nuisance.

## **Chapter 10 – Heritage**

**NH52** – Protect listed views and prospects.

Prospect ID54 refers to the prospect across the Derry Water River and towards south Wicklow Mountains.

**Appendix 1** – Development and Design Standards – Agriculture.

This sets out the standards and requirements for agricultural buildings.

## **5.2. Natural Heritage Designations**

There are no designated areas in the vicinity, the nearest designated site is the Slaney River Valley SAC (site code 000781) is c. 3.9km southwest of the site.

## **5.3 EIA Screening**

Having regard to nature of the development comprising the retention of a slatted shed and permission for a slatted shed in a rural area, 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.

## **6.0 The Appeal**

An appeal has been received from Colette Kinlay, adjoining property owner. The grounds of appeal are summarised as follows:

### **6.1. Grounds of Appeal**

- Environmental concerns relating to the storage of slurry.
- Nuisance due to odour.

The appellant also raised concerns that land drainage works were carried out with the land drained into the Derry River.

Included with the appeal is extensive documentation pertaining to environmental complaints to the Council and legal advice obtained.

### **6.2. Applicant Response**

This is mainly in the form of a rebuttal. Points of note include:

- The response reiterates the findings of the Odour Impact Assessment submitted under CFI to the planning authority.
- The farmyard was inspected (unannounced) on 4 occasions by the Council's Environment Section. The matter was closed as the Council's technician did not see any issues from an environmental point of view that needed to be addressed.

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

None.

### **6.4. Observations**

None.



## **7.0 Assessment**

**7.1.** The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings;

- Odour and Amenities of the Area
- Other.
- Appropriate Assessment

### **7.1 Odour and Amenities of the Area**

**7.1.1.** The proposed development is located within c. 200m of four dwellings including the Horan Family home. While it is not ideal to have an intensive livestock facility so close to dwellings, the development before the Board is part of an existing working farmyard that was established on foot of PA Ref. No. 06/5910. I consider this to be an established use and appropriate for a rural area, and as such subject to appropriate controls it would not have an unacceptable impact on local amenities.

**7.1.2** The main concerns raised in the grounds of appeal was that the existing farmyard posed a threat to public health due to significant odour nuisance from the existing farmyard operations. Particularly given the proximity of the farm buildings used for housing animals to the appellants residential property. While I accept that the odours associated with the housing of livestock may be a nuisance it must be accepted as part of living in a rural area next to a working farm. I acknowledge the personal circumstances of the appellant, however I note that no observations were lodged from the owners of other houses in the immediate vicinity at appeal stage.

**7.1.3** The applicant has set out that the development before the Board is to accommodate existing livestock (c.233 animals) which includes animals currently located on out farms. And consolidate their operations at one location by expanding the facilities and upgrade farm practices to meet current Department of Agriculture farm building and waste management standards.

**7.1.4** The issues of smells and impact on adjoining properties was addressed at application stage and an Odour Impact Assessment submitted. This concluded

that the odour was faint and consistent at most locations. I note that the appellant has submitted copies of correspondence with Wicklow County Council, no environmental action was taken against the applicants on foot of the complaints as it was concluded that there was no case. No detailed odour impact assessment have been carried out by the appellant to support their assertions. I inspected the site on the 13<sup>th</sup> June 2019, the odours experienced on site were akin to those one would experience at any working farmyard and did not present any discomfort during the time spent on site.

7.1.5 I have reviewed the odour impact assessment report, and the response to the appeal by the applicant and I am satisfied that the development to be retained and that proposed, together with compliance with the relevant conditions and farmyard practices would address the third party concerns. In this regard I also note that the Council's Environment Section had no objection to the proposed development. Based on the available information and following my site inspection, I do not consider that the proposed development will impact negatively on the residential amenity of the adjoining property or result in the depreciation of the value of their property.

7.1.6 I am satisfied that the proposed development and that to be retained is acceptable subject to appropriate conditions.

## **7.2 Other**

7.2.1 There are concerns about various aspects of the unauthorised development ranging from structures to land drainage.

7.2.2 Having regard to these issues it is noted that the Board has no function in respect of enforcement issues. Such matters are more appropriately dealt with by the Planning Authority. Section 10.1 of the Development Management Guidelines 2007 is relevant in this regard i.e.: *Enforcement of planning control is the responsibility of the planning authority and this is the case, of course whether the planning decision, including conditions, was made by the planning authority or the Board.*

### **7.3 Appropriate Assessment**

- 7.3.1 The nearest water course, Coolalug Steam, is c. 100m to the north of the farmyard. This feeds into the Derry River (drinking water supply source) which flows in a south easterly direction. The nearest designated site is the Slaney River Valley SAC (site code 000781) c. 3.9km southwest of the site. There is no hydrological connection with the designated site.
- 7.3.2 The Planning Authority concluded that *'having regard to the existing development on site and the nature, scale and location of the development it was considered that the proposal would be unlikely to give rise to any significant adverse impacts on the qualifying interests and conservation objectives of the designated sites'*.
- 7.3.3 The Slaney River Valley SAC is an extensive site which is spread across three counties. Conservation Objectives have been prepared for the site
- 7.3.4 Notwithstanding the drainage conditions on site. The watercourse in question flows in an easterly direction to a different drainage catchment. Therefore, there is no hydrological connection to Slaney River Valley SAC.
- 7.3.5 Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude that 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 European Site No. 000781, or any other European site, in view of the site's Conservation Objectives. A Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

### **8.0 Recommendation**

I recommend that retention permission and permission be granted for the reasons and considerations and subject to the conditions set out below.

## 9.0 Reasons and Considerations

Having regard to the scale and nature of the development, it is considered that, subject to compliance with the conditions set out below, the development to be retained and the proposed development would not seriously injure the amenities of the area and would not be prejudicial to public health. The development to be retained and the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area-

## 10.0 Conditions

1. The development shall be carried out, completed and retained in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Water supply and drainage arrangements for the site, including disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard-
  - (a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and
  - (b) all soiled waters shall be directed to a storage tank.

Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

**Reason:** In the interest of environmental protection and public health.

3. The slatted shed shall be used only in strict accordance with a management schedule which shall be submitted to and agreed in writing

with the planning authority, prior to commencement of development. The management schedule shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended, and shall provide at least for the following:

- (1) Details of the number and types of animals to be housed.
- (2) The arrangements for the collection, storage and disposal of slurry.
- (3) Arrangements for the cleansing of the buildings and structures (including the public road, where relevant).

**Reason:** In order to avoid pollution and to protect residential amenity.

4. All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the proposed and existing storage facilities and no effluent of slurry shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

**Reason:** In the interest of public health.

5. All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soak pits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent and slurry storage tanks or to the public road.

**Reason:** In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

6. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended.

**Reason:** To ensure the satisfactory disposal of waste material, in the

interest of amenity, public health and to prevent pollution of watercourses.

7. A minimum of 16 weeks storage shall be provided in the underground storage tanks. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.

**Reason:** In the interest of environmental protection and public health.

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Dáire McDevitt

Planning Inspector  
3<sup>rd</sup> July 2019