



An
Bord
Pleanála

Inspector's Report ABP 304614-19

Development	Retain slatted shed and farm storage shed.
Location	Killowen, Kenmare, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/288
Applicant	John O'Sullivan
Type of Application	Retention permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellants	1. T & S O'Reilly 2. J & G Riney
Observer(s)	None
Date of Site Inspection	12/08/19
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site which has a stated area of 0.31 hectares is accessed from the R569, to the north-east and approx. 2km from Kenmare town centre. The site is within the 60kph speed limit.

The site is roughly rectangular in shape, set back from the road, and served by an access which serves both the farmyard, the applicant's dwelling and a further dwelling that has frontage onto the road. The site is to the rear of a further two houses (the appellants), also with frontage onto the road.

There are two new sheds erected in the yard, one which directly abuts the southern boundary with the 2nd located in the centre with a timber fence erected immediately to the east of same. An old two storey dwelling which is being used as a shed is also within the farmyard.

The site is raised above the lands to the north and east with a rock armour base noted. The southern boundary to the appellants' dwellings is delineated by a wall and trees. The site is higher than the said dwelling sites.

2.0 Proposed Development

Retention permission is sought for

1. Slatted shed with a gross floor area of 209 sq.m. and height of 5.040 metres. The shed has a concrete base and walls finished in a dark green cladding.
2. 2 bay storage shed open to the farm yard with a secure storage area in between. The shed has a gross floor area of in the region of 224 sq.m. and height of 5.10 metres. It also has a concrete base and walls finished in a dark green cladding.

The works entailed the demolition of two sheds originally on the site.

Unsolicited further information received by the planning authority amends details on the plans as submitted and includes a letter from the applicant in defence of the proposal.

3.0 Planning Authority Decision

3.1. Decision

Grant retention permission for the above described development subject to 7 conditions.

Condition 2: Shed 2 to be used for agricultural storage purposes, only, and shall not be used for housing of animals.

Condition 3: All roof waters from existing and proposed buildings to be piped to a suitable soakpit or free flowing watercourse. Submission of site layout plan with soakpit shown thereon to be submitted within 1 month of the permission.

Condition 4: Planting and screening requirements.

Condition 5: Financial contribution.

Conditions 6: Compliance with EU (Good Agricultural Practice for the Protection of Waters) Regulations 2014.

Condition 7: Diversion of clean rain water from roofs and paved areas from storage facilities for soiled water and effluents.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report notes that the sheds are located in a farmyard set back from the road behind a line of roadside dwellings. The location of the soakpit to be submitted on a revised site layout plan. The shed nearest to the dwellings is for storage and not for housing of animals. This will be conditioned. The proposal will not impact negatively on residential amenity. The farmyard complex is long established and predates some of the nearby dwellings. From the details submitted the slatted unit is situated further away from the existing dwellings than the previous animal shed. A grant of retention permission subject to conditions recommended.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Objections to the proposed development received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the grounds of appeal summarised in section 6 below.

4.0 Planning History

I am not aware of any previous planning applications on the site.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015

The site is in an area zoned Rural General and is outside the development boundary of Kenmare.

Chapter 13 sets out the Development Management Guidelines

Section 13.12 Agricultural Buildings

The following will be taken into account in all proposals for new agricultural buildings:

- Proximity to adjacent dwellings.
- The rural character of the area.
- Utilisation of natural landscape and land cover as screening.
- Waste management in terms of storage and disposal.
- Environmental carrying capacity. It is a requirement that agricultural buildings are designed, located and orientated in a manner that will minimise their environmental impacts. A number of exemptions apply to farm buildings as set out in Part 3 of the Planning and Development

Regulations 2001 - 2013. These exemptions will generally only apply to farms in rural locations.

- All agricultural development that results in manure, soiled water and slurry etc shall comply with the *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 [S.I. No. 610 of 2010], as amended by European Communities (Good Agricultural Practice for Protection of Waters)(Amendment) Regulations 2011 [S.I. No. 125 of 2011], and/or any substituting or amending regulations.*

5.2. Natural Heritage Designations

None in the vicinity

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Timothy & Sheila O'Reilly

- The storage shed is an eyesore. It is out of proportion. There are concerns that it may be used for commercial purposes.
- The slatted shed is too near. The smells and noise from the unit will impact negatively on their dwelling and their proposals to extend same.
- The value of their property will be adversely affected.

6.1.2. Jerry & Geraldine Riney

The appeal, which is accompanied by supporting details and photographs, can be summarised as follows:

Shed 1 – Slatted Unit

- The shed is within 100 metres of their dwelling. Their consent was not sought.
- It has been built without consideration of neighbouring properties and will result in noise and odours which will have an adverse impact on their residential amenities.

Shed 2 – Farm Storage

- The original shed was less obtrusive, smaller and further away from their property.
- The shed is built on raised ground which is approx. 2 metres above the finished floor level of their dwelling.
- It is disproportionate, has a severe impact on their amenities and is visually overbearing.
- It has a negative impact on the local residential built environment and is not suitable in such close proximity to dwellings.
- The planning authority did not refer to the fact that it is much higher than the previous shed. It is visible from the road and impacts on the visual amenity of the area.
- There are concerns that the shed would be used for commercial purposes or adapted for use as a straw bed cattle housing unit.
- It could set a precedent for further developments on the site as far as the laneway to the east.

Other Issues

- The only other sheds over 100 years old are the old dwelling and the outhouses attached to same.
- The plans do not show the locations of the soakpits. The downpipe on shed 2 flows directly to ground.
- The site notice was not displayed as per the details given on the site map.
- The details given on the site layout plan and the scale on the landholding map are inaccurate.
- There are concerns that the planting required by condition 4 will not be possible as shed 2 is very close to the neighbouring boundary wall.
- There is no guttering on the transition from the round roofed part of shed 2 to the pitched roof. The Council did not note this oversight.

6.2. Applicant Response

The submission by MOL Engineers on behalf of the applicant, which is accompanied by supporting details, can be summarised as follows:

Shed 1 – Slatted Unit

- Prior to the construction of the slatted shed there was an animal house and open animal yard on the site. There used to be a silage pit against the southern wall of the open yard. Slurry used to be gathered by a scraper and pushed down to the open slurry tank. The slatted shed is further away from the dwelling houses than the previous animal shed and open yard. It sits over where the open slurry tank used to be located.
- The slatted shed has improved the environmental standards on the farm.
- There will be no increased smells or noise.
- Rather than leaving the concrete wall exposed, the exposed sides were lined with limestone rock armour to help blend the building into the landscape.
- It is proposed to provide additional planting along the northern and eastern sides of the rock armour below the shed.

Shed 2 – Storage Shed

- The shed has been located in the only viable location within the farmyard. The lands to the north and east slope steeply downwards. To the west is the existing site entrance and buildings.
- The shed is not as visible from the road as contended.
- The property owners on the opposite side of the road have not made any complaints about the sheds.
- The owner directly behind has started to grow ivy up the back of the shed. The said owner has not objected.
- The shed is located to the north-west of the appellants' properties with mature screening in between.
- The shed is coloured green to blend in with the rural environment.

- As the shed is located to the north of both properties it will have no impact on light.
- The guttering and soakaways are not complete due to the requirement to cease works on the site. It shall be completed once permission is granted as per condition 3.
- The shed has a floor area of 224 sq.m. and complies with the exempted development provisions save for securing the written consent of the owners of dwellings within 100 metres of the proposal.
- The shed is proposed for farm storage only.
- An overhang is done so as to keep rain away from the open side of the shed.
- It is considered that the planning authority's requirements for additional planting refer to the area around shed no 1.

Other Issues

- The site is outside the development boundary of Kemare in an area zoned rural general. The new sheds have not changed the rural landscape.
- The farm and associated farm yard has been in existence for over 100 years and prior to the construction of the dwellings.

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

7.0 Assessment

I consider that the issues arising can be assessed under the following headings:-

- Principle of Development
- Amenities of Adjoining Property
- Other Issues
- Appropriate Assessment

7.1. Principle of Development

The site, which is set back from regional road R569, whilst within the 60kph speed limit, is outside the development boundary of Kenmare. It is within an area designated as rural - general in the current County Development Plan. The farmyard has been in existence for a long period of time and predates the majority of the housing that has developed along the roadside and which back onto the site. The appellants' dwellings are located to the south-east of the farmyard with a 3rd dwelling backing onto the site to the west of same.

It is evident that the works subject of the application are for the purpose of improving the running of the farm and reducing the possibility of negative environmental effects. Having regard to the well-established nature of the farm complex, I consider it reasonable that there would be a presumption in favour of improving and upgrading farm buildings to meet current farming standards. The principle of the proposal is, therefore, acceptable subject to consideration of the planning issues set out below.

7.2. Amenities of Adjoining Property

The substantive issue arising pertains to the location of the sheds in proximity to adjoining residential properties. The appellants' concerns in this regard stem from the potential for noise, odour and visual impact.

The slatted shed is located 45 and 50 metres to the north of the Rineys' and O'Reillys' dwellings respectively and is not visible from same due to the existing screening along the boundary. Prior to its construction there was an animal house and open animal yard within the complex with slurry stored in an open tank. Given these circumstances, I consider the slatted shed would provide for improved

environmental conditions and I submit that noise and odour from the structure would be either negligible or difficult to distinguish from what has prevailed on site. I consider that subject to ongoing good farm management and practice no significant negative amenity impacts are likely. I recommend that a management schedule in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2017 (SI No 605 of 2017) detailing (1) 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, be required by way of condition in the interests of clarity.

Due to the raising of the land the slatted shed is elevated above the lands to the north and east. Whilst the area has an innate rural quality it is not within an area designated as being of high scenic amenity in the current Kerry County Development Plan. I would also note that slatted sheds are common agricultural structures and the shed as erected is of a standard agricultural design, with a mix of concrete and green metal cladding to the walls and roof. While the structure will be visible I do not consider that the placement of such a structure and its associated activity would be seriously injurious to the visual amenities or established character of the area. The applicant proposes planting along the northern and eastern sides of the rock armour below the shed to provide for a level of screening. This is considered reasonable.

The 2nd shed which is used for agricultural storage purposes has been constructed immediately adjoining the southern site boundary and to the north-west of the appellants' dwellings. There is a 2 metre level differential, with the appeal site higher than the appellants' properties. It is approx. 22 and 32 metres from the nearest point of the Rineys' and O'Reilly's dwellings respectively. Whilst the structure is large I consider that due its position to the south and offset from their rear boundaries and the existing planting along same, it would not give rise to such visual intrusion or be overbearing in views as to warrant a refusal of permission. As evidenced on day of inspection the shed has a greater impact on the 3rd dwelling to the west of the appellants. As per the applicant's appeal response the said owner has planted ivy which will grow up the side of the shed and which will assist in its screening. I note that the respective owner has not objected to the proposal.

In terms of visual impact from the road at the time of site inspection views were largely restricted due to the existing screening. Whilst it may be more visible in

winter views the intrusion would still be limited and I do not consider that it would present a visually dominant feature when travelling along the road.

As noted by the agent for the applicant the guttering on the shed is not complete and a soakaway not provided due to the requirement to cease works on the site. A condition requiring the details of the soakaway and a timescale for the completion of the works is considered appropriate should the Board be disposed to a favourable decision.

The appellants express concern as to the potential use of the shed. Permission has been sought for the retention of the shed for farm storage purposes only. Any potential use for commercial purposes would require the requisite permission. A condition precluding the use of the shed for the housing of animals is recommended in the interests of clarity.

7.3. Other Issues

The appellants make reference to the conditions and limitations in respect of agricultural exempted development as set out in the Planning and Development Regulations 2001 as amended. The separation distances therein do not purport to be minimum separation distances, but require agricultural development closer than 100m from a dwellinghouse to seek planning permission should consent not be forthcoming from the dwelling owners as is the case in this instance.

I note that revised plans were submitted by way of unsolicited further information addressing the discrepancies in terms of scale. In terms of the footprint of the Rineys' dwelling on their site I note that the details provided by the appellants differs from that as delineated on the site plan. Notwithstanding, I do not consider that the discrepancy is material and, in my view, the documentation is adequate for the purposes of the assessment of the development proposed to be retained.

The position of the site notice is not a matter for comment in this appeal.

Appropriate Assessment

Having regard to the nature and scale of the development and nature of the receiving environment together with the distance to the nearest European site, 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.

8.0 Recommendation

Having regard to the documentation on file, the grounds of appeal, the response thereto, a site inspection and the assessment above I recommend that retention permission be granted for the above described development for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the long established use of the site as a farmyard, to the nature and extent of the development to be retained and to the existing character and pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development to be retained would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed 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 and the development shall be retained and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The slatted shed shall be used only in strict accordance with a management schedule to 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 Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2017 (SI No 605 of 2017), 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.

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

3. Shed No. 2 as delineated on the 'As Constructed Site Plan' (drawing no. MOL092-18-05) lodged with the application shall be used for agricultural purposes only and shall not be used for the housing of animals.

Reason: In the interest of clarity and to protect residential amenity.

4. Slurry generated by the retained 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 Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2017 (SI No 605 of 2017).

Reason: To ensure the satisfactory disposal of waste material, in the interest of amenity, public health and to prevent pollution of water courses.

5. 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 or 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.

6. (a) 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 soakpits 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.

(b) Within one month of the date of this order a revised site layout plan with the location of the proposed soakpits delineated thereon and the timescale for their provision and the completion of the guttering to Shed No.2 shall be submitted for the written agreement of the planning authority.

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

7. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

8. The developer shall pay to the planning authority a financial contribution 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 Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid

within three months 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme. Reason: 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

Pauline Fitzpatrick
Senior Planning Inspector

August, 2019