



An  
Bord  
Pleanála

## Inspector's Report ABP-305668-19

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<b>Development</b>	To retain indefinitely silage base, hard surfaced yard and all associated works.
<b>Location</b>	Arderra, Mooncoin, County Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	19/246
<b>Applicant</b>	William Brennan.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Kilkenny County Council.
<b>Type of Appeal</b>	Third Party V. Grant
<b>Appellant</b>	Tom Kearns
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	25 <sup>th</sup> March 2020.
<b>Inspector</b>	Susan McHugh

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## **1.0 Site Location and Description**

- 1.1. The appeal site forms part of a farmyard complex, in the rural village of Arderra, located approx. 5km west of Kilmacow Lower and 4km north of Mooncoin, County Kilkenny. The village is characterised by a number of farmhouses and farmyards.
- 1.2. Access is from the existing entrance agricultural entrance gate from the local road. The farmyard comprises milking parlour, cattle shed, silage storage area and hard surfaced yard.
- 1.3. The site is adjacent to a number of residential properties located to the north and west. The appellants parents property and farm are located to the west.
- 1.4. The boundary between both properties is defined by mature hedgerow and trees. There is also a slight difference in site levels between both properties, with the appellants property being slightly higher than the appeal site.
- 1.5. The stated area of the appeal site is 0.66ha.

## **2.0 Proposed Development**

- 2.1. The applicant is seeking permission for retention of a silage base, hard surfaced yard and all associated works.
- 2.2. The silage base is located to the rear of the existing cattle shed and has a stated area of 506sqm. Silage is stored and covered over by black polythene and secured with tyres. It is located approx. 7.208m from the western boundary.
- 2.3. The hard surfaced yard area is located along the western boundary and currently in use for the storage of farm machinery. It has a stated area of 1,000sqm.
- 2.4. The site is served by public water mains.
- 2.5. The application is accompanied by calculations for stock slurry arrangements for storage and waste disposal.
- 2.6. A further information submission lodged 29/08/2019 includes a revised site layout showing site levels, the area within the hard surfaced yard area for the storage of silage bales, and a letter from the applicants wife outlining the background to the development.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to **grant retention** permission for the above described development subject to 5 no. conditions including:

Condition 1: Compliance with plans and particulars.

Condition 2: Storm water discharge requirements.

Condition 3: Soiled water storage and disposal requirements.

Condition 4: Trees along the south western boundary to be retained.

Condition 5: Baled silage / haylage storage requirements.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report (dated 04/06/2019 and 20/09/2019)

Basis for the P.A. decision includes:

- The 1<sup>st</sup> planners report refers to Section 6.2.4 of the Development Plan which outlines policy in relation to Agriculture, noting objectives relevant to the case.
- Arderra is a south Kilkenny farm village worthy of protection under Section 8.3.8.1 of the Kilkenny County Development Plan 2014-2020.
- Having regard to the lack of detail on the submitted drawings in respect of soiled water drainage management, third party submission received and environmental referral report, further information required.
- The 2<sup>nd</sup> planners report notes the detailed response submitted and recommends a grant of permission.

#### 3.2.2. Other Technical Reports

- **Environment Section** – The 1<sup>st</sup> report dated 31/05/2019 recommended further information in relation to where surface water run-off from the hardcore surface area is collected and disposed, confirmation of what material shall be

stored in the area; applicant to submit a revised site layout drawing detailing the levels across the hardcore surface area and clean yard; and to review submissions submitted to the planning authority and respond accordingly.

- Following receipt of further information, the 2<sup>nd</sup> report dated 17/09/2019 had no objections subject to conditions in relation to stormwater management, soiled water and storage facilities to prevent run-off or seepage therefrom.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

One submission was received from the neighbouring property. The objections to the proposed development received by the Planning Authority have been forwarded to the Board and are on file for its information. The issues raised are comparable to those in the Third Party appeal summarised in section 6 below.

## 4.0 Planning History

**ENF18/066:** Alleged unauthorised silage pit, hard surfaced yard and associated development.

## 5.0 Policy Context

### 5.1. Kilkenny County Development Plan 2014-2020

The Kilkenny County Development Plan is the operative development plan for the area,

**Section 6.2.4** outlines policy in relation to agriculture development.

**Section 8.3.8.1** refers to Kilkenny Farm Villages and Development Management Standards.

## 5.2. Natural Heritage Designations

There are no designated European sites in the vicinity of the site. The Lower River Suir SAC (Site Code 002137) is located approx. 4km to the south west.

## 5.3. EIA Screening

Having regard to the nature of the development to be retained, the nature of the receiving environment, and proximity to the nearest sensitive location, 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

### 6.1. Grounds of Appeal

6.1.1. The Third Party appeal against the decision to grant retention permission by the planning authority has been lodged by Tom Kearns the owner of the property and landholding to the west of the appeal site.

6.1.2. The appeal was accompanied by a copy of the third party submission lodged with the Planning Authority by Peter Thomson, Planning Solutions on behalf of the appellant in the current appeal. The grounds of appeal can be summarised as follows;

- Condition No. 5 requires baled silage on the hard surfaced yard to be stored no closer than 6m from the neighbouring hedgerow boundary and therefore 36m from the back wall of the appellants parents' house.
- Concern in relation to potential health and environment hazards of storing silage bales so close to a dwelling. Decision is not in keeping with proper planning and sustainable development and there are alternative locations for the storage of silage bales on site.
- Prior to submitting a complaint to the planning authority, it was confirmed with the P.A. that silage bales fell into the same category as a silage pit that is Class 8 of Part 3 Schedule 2 of 2001 Planning and Development Regulations,

i.e. no structure should be within 100m of any house other than the person providing the structure.

- Refers to previous silage pit located up against the boundary of the appellants property, with no concrete base in 2015 which meant that there would have been health and environmental risks.
- Original silage pit location - Has resided in his parents' house for 8 years and understands the workings and challenges of a farming village which is why he did not object to the location of new the silage pit (which is located 65m from the existing house) and not 90m as reported in Margaret Brennan's letter. Photo indicating original silage pit location dated September 2011 attached.
- Disputes assertion by the applicant that the area in question had no bales stored in this location. Photo dated September 2011 attached.
- Do not consider that due consideration has been taken of the issues raised in submissions to the P.A.
- Request the Board to consider concerns raised in relation to the proximity of the storage area for silage bales proposed to be retained, and that they shall only be stored at a reasonable distance so as not to pose a risk to the current family resident and those into the future.

### Background

- Appellant owns a house, garden, stables, outbuildings and 2 paddocks on 0.64ha adjoining the application site.
- The house is occupied by his elderly parents, while the appellant lives elsewhere on the outskirts of the village.
- In or around 2000 the applicant acquired the parcel of land adjoining the appellants property. When the land was acquired it was in grass and used to store the occasional piece of farm equipment.
- In 2015, the applicant laid a compacted stone surface on this parcel of land and developed a silage pit on top which was hard onto the common boundary between the yard and the appellants parents' house. This silage pit was 30m from the house.

- Around the same time the applicant developed a new silage storage area on a purpose built base with drainage behind the existing cubicle and loose animal housing. This was over 60m from the appellants parents' house. The making or storage of silage along the common boundary ceased at that time.
- In 2016 the applicant approached the appellant to sign a letter confirming he had no objection to the new silage storage area behind the existing cubicle and loose animal housing, to which the appellant elected not to sign. The appellant then drafted a letter to the applicant requesting that the parcel of land which had been hard surfaced would not be used for making or storing silage, to which the applicant would not agree.
- In 2018 the applicant started using the compacted stone surfaced farmyard for storing bales of silage. The applicant then made a complaint to the planning authority, which then lead to the current application for retention.

#### No objection in principle

- No objection in principle to the location of the silage base behind the cubicle.

## 6.2. Applicant Response

A response to the third party appeal was lodged 12/11/2019 and can be summarised as follows;

#### Condition No. 5

- Requires that baled silage/haylage on the hard-surface yard shall not be stored closer than 6m from adjacent north westerly neighbouring hedgerow boundary.
- Notes appellants assertion that silage bales fall within class 8 of part 3 schedule 2 of 2001 planning and development regulations and therefore should not be within 100m of any house other than the person providing the structure.
- Submits that the appellant has misinterpreted the contents of Class 8, which covers a variety of farm structures which include structures for making or storing silage, more commonly known as silage pits. Class 8 refers to



structures only; silage bales are not structures and not included under Class 8.

- Silage bales are wrapped self-contained units of silage that can be stored on concrete, hardcore or in a field. In relation to the storage of silage bales it is intended to strictly adhere to the requirements of condition 5.

#### Potential health and environmental hazards

- Silage bales are a very valuable resource to farmers, and it is in the interest of every farmer to ensure that each silage bale is correctly wrapped and sealed as a first step to storing silage bales. It is critical to ensure on an ongoing basis the integrity of the wrapping in order to maintain the quality of the silage and prevent seepage.
- Notes existing high hedge and tall trees between both properties.
- Rear garden of appellants parents' house is over 1m higher than ground level where the silage bales are stored, thereby negating any possibility of seepage from any of the silage bales causing any health/environmental hazards to the appellants property.
- Storage area for silage bales is located south east of the appellants property, while the prevailing wind in Ireland is south west.
- Silage bales are not visible from the appellants property.
- Refers to the location and previous storage of silage bales within the appellants property. (photo attached).
- Arderra is a traditional farming village typical of South Kilkenny, are a compact farming community and the respect and support of neighbours is critical. Farming at such close quarter to one's neighbours can be challenging and requires a degree of flexibility between all parties.

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

The Planning Authority had no further comments.

## 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. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Planning Policy
- Planning History and Retention Issues
- Residential Amenity
- Drainage/Waste Disposal
- Appropriate Assessment

### 7.2. Planning Policy

7.2.1. The appeal site is in a rural area without specific zoning designations or controls. In such areas there is a general presumption in favour of agricultural development subject to appropriate design and environmental considerations.

7.2.2. The complex of agricultural buildings appear to be long established on the site. I would consider that in the context of development plan policy, the nature of the local area, the proposed development for retention should be considered favourably, having regard to amenity and pollution issues.

### 7.3. Planning History and Retention Issues

7.3.1. Peter Thomson Planning Solutions acting on behalf of the appellants has submitted that the compacted stone surface laid in 2015, has been in use for storing bales of silage since 2018. The third party considers that the development which is located

6m from the western boundary and 36m from the rear of his parents dwelling comes under Class 8 Part 3 Schedule 2 of the Planning and Development Regulations 2001.

- 7.3.2. The applicant submits that the appellant has misinterpreted the contents of Class 8, which covers a variety of farm structures which include structures for making or storing silage, more commonly known as silage pits. It is also contended that Class 8 refers to structures only; and that silage bales are not structures and not therefore, included under Class 8.
- 7.3.3. Part 3 Schedule 2 of the Planning and Development Regulations 2001 provides for *Exempted Development Rural*.
- 7.3.4. Class 8 refers to 'Works consisting of the provision of ....open loose yards, self-feed silo or silage areas,... or structures for the making or storage of silage or any other structures of a similar character or description having an aggregate gross floor space not exceeding 200 square meters, and any ancillary provision for effluent storage'.
- 7.3.5. Such works come within the scope of exempted development provided no such structure is situated, 'within 100 metres of any house (other than the house of the person providing the structure).....save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof'.
- 7.3.6. For clarity the open surface yard area to be retained is located directly to the rear/east approx. 30m of the appellants property, and area indicated for the storage of silage bales is 6m from this boundary and therefore, 36m from the appellants property.
- 7.3.7. The silage base where silage is currently being stored is located approx. 60m from of the appellants property.
- 7.3.8. It is my opinion, therefore, that the proposed development does come within the scope of Class 8 Part 3 of Schedule 2 of the Planning Act, but not within the scope of the exemptions. This is based on the fact that the surface yard area and silage base area are located less than 100metres from the appellants property, and as outlined in the grounds of appeal no agreement or consent in writing from the owner of the adjoining property has been forthcoming from the appellants, and consequently obtained by the applicant.

7.3.9. Notwithstanding, the proposal will be considered on its own merits and in the assessment below.

#### **7.4. Residential Amenity**

7.4.1. The proposed development for retention is located in a cluster of dwellings and associated farmyards within the village of Arderra.

7.4.2. In my opinion the crux of this appeal is the dispute between the parties in relation to the use of the hard surfaced yard area for the storage of silage bales rather than retention of the silage storage area per se.

7.4.3. I have considered the chronology of events as outlined by the applicant and appellant in the current appeal. Site layout plan drawing submitted by further information dated 26<sup>th</sup> August 2019 indicates an area within the hard surfaced area for the storage of silage bales. This area is approx. 6m from the neighbouring hedgerow boundary and therefore 36m from the back wall of the appellants parents' house. The level given for the top of the bales is indicated as 103.98 a difference of approx. 2m from site levels of 101.58.

7.4.4. This was considered acceptable to the Environment Section of the planning authority and Condition No. 5 of the Notification of the grant of retention permission requires baled silage on the hard surfaced yard to be stored no closer than 6m from the neighbouring hedgerow and that stacking should not exceed double bale heights.

7.4.5. I can confirm from my site inspection in late March that the hard surfaced area is currently in use for the storage of farm machinery and that the boundary between both properties is defined by mature planting.

7.4.6. I can also confirm from my site inspection of the appellants property that the farmyard is not visible from the rear garden of the existing house. I also note Condition No. 4 of the notification to grant permission requires the retention of existing trees along the south western boundary be retained.

7.4.7. I do accept that it is not ideal to have an intensive livestock facility so close to dwellings, but also note that the site and adjoining sites are located in an established cluster.

- 7.4.8. I also consider the use of the appeal site to be a generally established use and appropriate for a rural area. As such I consider that subject to appropriate controls, the proposed development would not have an unacceptable impact on local amenities.
- 7.4.9. The third party residents are concerned about odours from the silage storage area, particularly given the proximity of the silage base to the appellants residential property.
- 7.4.10. While I do accept that odours associated with the storage of silage may be a nuisance, it must be accepted by the appellants as part of living in a rural area next to a working farm. I can confirm from my site inspection of the appeal site and the appellants property that there was no odour from the silage storage area, apart from the immediate vicinity of the site. I note the Environment Section of the planning authority had no objection to the proposed development.
- 7.4.11. I accept that the silage storage area is visible from an adjoining paddock area within the appellants landholding, however it is not visible from the rear of the appellants property. In my opinion the silage storage area does not detract from the visual amenity of the appellants property.
- 7.4.12. On this basis, I do not consider that the development to be retained will impact negatively on the residential amenity of the adjoining property or result in the depreciation of the value of that property.
- 7.4.13. I am satisfied, therefore, that the proposed development to be retained is acceptable, subject to appropriate conditions.

## **7.5. Drainage/Waste Disposal**

- 7.5.1. The appellants have raised concern in relation to potential health and environment hazards of storing silage bales so close to a dwelling.
- 7.5.2. The Environment Section of the planning authority requested further information in relation to surface water run-off from the hardcore surface area and details of site levels.
- 7.5.3. The applicants in their response indicate that the hardcore surface yard area acts as a soak pit and that given the levels any water from this area would flow to an outlet

at the back of the milking parlour. The details of the materials used are indicated as consisting of 75mm blinding on 200mm hardcore, site levels of approx. 101.50 with the level given for the top of the bales as 103.98 a difference of approx. 2m.

- 7.5.4. On the day of my site inspection, I saw no evidence of ponding and also note that site levels of the surface yard are approx. 1m lower than the appellants property. I am satisfied therefore that the hardcore area does act as a soakaway and note that and that subject to the requirements of Condition No. 2 and 3 of the notification of grant of permission that the proposal will not be prejudicial to public health.
- 7.5.5. In relation to the silage base I note the site layout and plan and section drawings dated 12<sup>th</sup> April 2019 indicate a fall in site levels in an easterly direction and away from the appellants property. Drainage channels are also indicated on all sides of the silage base which drain to a surface water diversion manhole and piped to slats within the cattle shed.
- 7.5.6. In summary I am satisfied, that subject to condition 2 and 3 of the notification to grant permission that the proposed development to be retained is managed in accordance with the standards that it will not be prejudicial to public health.
- 7.5.7. I am satisfied, therefore, that there is no basis to this grounds of appeal.

## 7.6. **Appropriate Assessment**

- 7.6.1. There are no watercourses in the vicinity of the site. While run-off or seepage from the storage of silage could potentially contaminate groundwater, I am satisfied that the layout and drainage arrangements for the storage of baled silage and sileage base, to be managed in accordance with the requirements of the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2018, then there would be no effect on the environment.
- 7.6.2. Having regard to the nature and scale of the development proposed for retention, being a silage base and hard surfaced yard only, and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. I recommend that retention permission should be **granted** subject to conditions for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

Having regard to the nature of the development proposed for retention, and to the historic use of the site for farming and related purposes, which is required in connection with a working farm and its location in a rural area, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention would not seriously injure the amenities of the area, would not be prejudicial to public health. The development proposed for retention would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The development shall be 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.  <b>Reason:</b> In the interest of clarity.
2.	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.  <b>Reason:</b> In the interest of environmental protection and public health.
3.	The development to be retained shall be in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2014, as amended. In particular, the development shall be undertaken to minimise the generation of soiled water. In addition, the design, capacity and structural integrity of storage facilities shall prevent run-off or seepage therefrom.

	<b>Reason:</b> In the interest of preventing pollution to surface/ground waters.
4.	Existing trees on site along the south western boundary shall be retained, reinforced as necessary where gaps exist and replaced with similar species in the event of failure.  <b>Reason:</b> In the interests of protection of residential amenity.
5.	Baled silage/haylage on the hard-surfaced yard shall not be stored closer than 6 metres from adjacent south westerly neighbouring hedgerow boundary and shall be adequately filmed wrapped and secured to exclude air. Stacking shall not exceed double bale heights. The hard-surfaced yard shall not be used for storage of animal feeds or farm waste.  <b>Reason:</b> To protect the residential amenities of the area.

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Susan McHugh  
Senior Planning Inspector

7<sup>th</sup> April 2020