



An
Bord
Pleanála

Inspector's Report

ABP-306109-19

Development	Retention permission sought for agricultural shed/stables, agricultural storage shed, lunge ring and walking ring, all using the existing vehicular entrance and all associated site works.
Location	Mayfield, Monasterevin, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	19/1050
Applicant	Christopher Donoghue
Type of Application	Permission for Retention
Planning Authority Decision	Refuse Permission for Retention
Type of Appeal	First Party v Refusal
Appellant	Christopher Donoghue
Date of Site Inspection	20.02.2020
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located adjacent to the M7 Motorway approx. 200 metres east of the Junction 14 Services at Mayfield, Monasterevin.
- 1.2. Access to the site is by way of a private access road which is located between the roundabout at the top of the Junction 14 slip road off the motorway and the services. The road is approx. 470 metres long, parallel to the motorway, and serves the applicant's detached two-storey house and the agricultural facilities subject of the application. The house and farmyard are located behind gates which are located approx. 330 metres from the junction with the public road. The ground level of the site is higher than that of the adjacent motorway and there is a hedge line between the site and motorway. The structures are visible from the motorway. The primary land use in the area is agricultural.
- 1.3. The site has a stated area of 8.34 hectares.

2.0 Proposed Development

- 2.1. The planning application is for permission for retention for an agricultural shed/stables, an agricultural storage shed, a lunge ring and a walking ring all using the existing vehicular entrance and all associated site works.
- 2.2. The floor space of the structures to be retained is stated as 1,356sqm.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority refused permission for retention for the following reason;
 1. The development to be retained is located within the minimum 91 metre building line set back requirement from the edge of the carriageway of the M7 Motorway Route, as outlined in Table 17.8 'Building Lines from Public Roads' and Section 17.7.2 'Building Lines' as set out in the Kildare County Development Plan 2017-

2023. The development would therefore materially contravene development plan policy in relation to building line set back from motorway routes, would act as a precedent to further such development elsewhere in the County, and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. The Planning Officer's report was the basis for the decision. The Planning Officer concluded that, having regard to the NRDO and Transportation Section reports received, the development was contrary to Section 17.7.2 and Table 17.8 of the Kildare County Development Plan 2017-2023.

3.2.2. **Other Technical Reports**

Water Services – No objection subject to a condition.

Roads, Transportation and Public Safety – A refusal is recommended because the development is within the 91 metres building line from a motorway as set out in Section 17.7.2 and Table 17.8 of the Kildare County Development Plan 2017-2023.

National Road Design Office – A refusal is recommended because the development contravenes the 91 metres setback distance.

Environment – No objection subject to conditions.

Kildare Newbridge Municipal District/Area Engineer – No objection subject to conditions.

Kildare Fire Service – No objection.

3.3. **Prescribed Bodies**

Transport Infrastructure Ireland – No observations to make.

Irish Water – The Planners Report states Irish Water had no objection subject to conditions however the planning authority has clarified that this was a clerical error and no Irish Water report was received.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. The relevant planning history is as follows:

P.A. Reg. Ref. 19/361 – Permission was granted in 2019 for (a) agricultural shed/stables, lunge ring and walking ring and (b) for the removal/demolition of an existing storage building, stables building, lunge ring and walking ring using the existing vehicular entrance and all associated site works.

P.A. Reg. Ref. 17/1304 – Permission was refused in 2018 for the retention of a lunging ring, horse walker, stable block, storage building, effluent treatment system and percolation area, existing vehicular entrance and all associated site works because the development is located within the 91 metres building line setback of the M7 motorway.

P.A. Reg. Ref. 16/506 – Permission was refused in 2016 for a temporary ten year retention permission for stables, lunge ring, walking ring, storage building and an effluent treatment system with percolation area using existing vehicular entrance and all associated site works because the development is located within the 91 metres building line setback of the M7 motorway.

P.A. Reg. Ref. 15/484 – Permission was refused in 2015 for the retention of stables, lunge ring, walking ring, storage building and effluent treatment system with percolation area using an existing vehicular entrance and all associated site works because the development is located within the 91 metres building line setback of the M7 motorway.

P.A. Reg. Ref. 11/456 – Permission was refused in 2011 for the retention of stables, lunge ring, walking ring, storage building with effluent treatment system with percolation area using an existing vehicular entrance and all associated site works because (i) the development is located within the 91 metres building line setback of the M7 motorway, (ii) the development, by itself or by the precedent it would set, would inhibit future upgrading proposals for the motorway, would result in a potential traffic

hazard and (iii) in the absence of adequate information the planning authority was not satisfied that the applicant had established the treatment system and percolation area would not present a risk of pollution to groundwater and surface water and would not be prejudicial to public health.

P.A. Reg. Ref. 03/251 – Permission was refused in 2003 for the retention of stables, lunge ring, walking ring and paper storage building with septic tank and effluent treatment system and percolation area because (i) the development is located within the 91 metres building line setback of the Kildare Town by-pass motorway and (ii) the development could, by itself or the precedent it would set, lead to a proliferation of similar-type development, inhibit proposals for future upgrading of the road etc.

5.0 Policy Context

5.1. Kildare County Development Plan 2017-2023

- 5.1.1. The site is not in a zoned area. Section 10.4.10 (Rural Enterprises) states that where an area is not within an identifiable settlement, and is not otherwise zoned, the use of such land shall be deemed to be primarily agricultural.
- 5.1.2. Chapter 5.11 (Equine) of the Plan includes Policy ECD 24 which actively promotes and supports the equine industry as an economic driver for Kildare.
- 5.1.3. Chapter 10 (Rural Development) is relevant to the application, including Section 10.5.4 (Policies: Equine Industry) which sets out a number of equine-related policies.
- 5.1.4. Section 17.7.2 (Building Lines) states that where developments are permitted in rural areas along National roads, they must conform to a minimum 91 metres setback as set out in Table 17.8 (Building Lines from Public Roads).

5.2. Natural Heritage Designations

The closest Natura 2000 site is River Barrow and River Nore SAC approx. 3.8km to the south west. The closest heritage area is Grand Canal pNHA approx. 3.5km to the north west.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- The structures were built in early 2000 as an emergency measure when part of the applicant's farm was CPO'd for the motorway. The applicant did not realise the buildings should have been set back by 91 metres. They were built in the best possible position for the working of the farm and land.
- The applicant lives immediately south east of the farm and permission was granted on the strength of his farm development.
- The development is double fenced and gated and there has never been an issue in relation to livestock and the motorway. On approach travelling south west the agricultural buildings are hardly noticeable.
- Transport Infrastructure Ireland had no observation to make on the application leading to a conclusion that they are not concerned with the development.
- Precedent has been set by both the planning authority and the Board in Co. Kildare in relation to the setback from the motorway. Examples provided are the adjacent motorway service station, the Horse Racing Ireland headquarters in Newbridge and a number of buildings in Naas.

6.2. Planning Authority Response

6.2.1. The planning authority has no further observations to make.

6.3. Further Responses

6.3.1. None.

7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Report 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:

- Principle of Development
- Retention of Structures
- Setback from Motorway
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. The development comprises agricultural/equine structures within the rural area. As noted, the Kildare County Development Plan 2017-2023 states that, where an area is not within an identifiable settlement, and is not otherwise zoned, the use of such land shall be deemed to be primarily agricultural. Therefore, I consider that equine-related structures in this rural location are acceptable in principle.

7.2. Retention of Structures

- 7.2.1. There are 4 no. structures subject to this retention application. The combined floor area is cited as 1,356sqm. The stables building has a stated floor area of 825sqm with a maximum indicated height of 4.1 metres. It has a render external finish. The storage shed has a stated floor area of 222sqm with an indicated maximum height of 5.5 metres. It is externally finished with some blockwork and a significant area of green metal cladding. The lunge ring has a stated floor area of 174sqm with an indicated maximum height of 5.075 metres. It is externally finished in blockwork with a green metal cladding roof. The walking ring has a stated floor area of 135sqm with an indicated maximum height of 4.4 metres. It is also externally finished in blockwork with a green metal cladding roof. The structures are standard agricultural/equine structures and are considered, in principle, to be acceptable.

7.3. **Setback from Motorway**

- 7.3.1. This issue comprised the planning authority's reason for refusal and is the basis of the appeal.
- 7.3.2. The current and previous Kildare County Development Plans require a minimum setback of 91 metres from a motorway and the structures were built within this setback. Permission for retention of these structures was refused on five occasions by the planning authority between 2003 and 2018 and the setback has consistently been cited as a reason for refusal. I note that in the most recent planning application on site, P.A. Reg. Ref. 19/361, permission was granted for agricultural shed/stables, lunge ring and walking ring and for the removal/demolition of an existing storage building, stables building, lunge ring and walking ring. The locations of the proposed structures were within the site boundary but set back further from the motorway and existing structures.
- 7.3.3. The planning authority's position has been consistent in terms of the 91 metres setback distance and the current County Development Plan is explicit. Section 17.7.2 (Building Lines) states that where developments are permitted in rural areas along National roads, they must conform to a minimum 91 metres setback as set out in Table 17.8 (Building Lines from Public Roads). The structures do not comply with this requirement as they are between approx. 5 metres and 25 metres to the site boundary adjacent to the motorway.
- 7.3.4. The applicant identified nine buildings which were granted planning permission within the County located within 91 metres of the M7 and considers these precedents should apply to the current application. In relation to the adjacent service station the distance shown is to the edge of the slip road as opposed to the motorway itself. The Roads, Transportation and Public Safety Section report of the planning authority noted that the applicant referenced the service station in the application but considered that the service station did not set a precedent and noted the approx. 25 metres distance in the current application between the nearest building and the motorway. Section 17.7.2 and Table 17.8 of the Plan specifically refers to developments permitted in rural areas, not all areas. The other buildings referred to in the grounds of appeal are in Newbridge and Naas. The Horse Racing Ireland headquarters building is located within the boundary of Newbridge as defined by the Newbridge Local Area Plan 2013-2019 (extended to 20201). The buildings identified in Naas are located within the M7

Business Park, Osberstown Industrial Park and the Monread Shopping Centre area; none of which could be considered to be rural areas even though they are located outside the town boundary of the Naas Town Development Plan 2011-2017 (the town boundary being a circle from the centre of town rather than a boundary which takes into account existing developments or built or natural features).

- 7.3.5. While each planning application is assessed on its own merits, the development subject to the application, in a rural area, contravenes the 91 metres setback distance contained within the Kildare County Development Plan 2017-2023. To permit this development would contravene the provisions of the Plan, would infringe the building line determined by the planning authority, would set an undesirable precedent and would be contrary to the proper planning and sustainable development of the area.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the development and to the nature of the receiving environment with no hydrological pathway to any European site, no appropriate assessment issues arise and it is not considered that the 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 the planning application be refused for the following reason and consideration.

9.0 Reasons and Considerations

1. Chapter 17.7.2 (Building Lines) and Table 17.8 (Building Lines from Public Roads) of the Kildare County Development Plan 2017-2023 states that it is the policy of the Council that developments in rural areas must be a minimum 91 metres from motorways. The structures to be retained are located within 91 metres of the M7 Motorway. The development would therefore contravene the

provisions of Chapter 17.7.2 (Building Lines) of the Kildare County Development Plan 2017-2023, would infringe a building line determined by the planning authority, would set an undesirable precedent for further similar development and would be contrary to the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

26.02.2020