



An
Bord
Pleanála

Inspector's Report

ABP-306879-20

Development

RETENTION of: A. Bay extension to round roof shed, with 1 bay extensions to lean-to, at both sides. B. 4 bay canopy over easy feeding system. C. Dungstead with adjacent effluent tank. D. Demolish portion of the existing entrance to the North. E. All associated site works.

Location

Rathduff, Ballyragget, Co. Kilkenny.

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

19134

Applicant(s)

Patsy Murphy

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

Patrick Phelan

Observer(s)

None

Date of Site Inspection

15 June 2020

Inspector

Una Crosse

1.0 Site Location and Description

1.1. The site of the proposed development comprises 0.172ha on a landholding with a stated area of 10 acres. There are existing agricultural buildings on site with a stated area of 399m². The site is located on corner of a T-junction formed by local roads LT58521 and LT58520 within an area known as Rathduff which is c.0.5km north of the centre of Ballyragget. There is a dwelling located directly opposite the site with a number of dwellings and farmholdings within the wider area.

2.0 Proposed Development

2.1. Permission is sought to retain a number of elements as follows:

- A 1-bay extension to round roof shed with 1 bay extensions to lean-to at both sides. Application form states that the area proposed to be retained is 96.4m²;
- A 4-bay canopy over the easy feeding system;
- Dungstead with adjacent effluent tank
- Demolition of portion of existing entrance to the north
- All associated site works.

2.2. In response to the further information request, the applicants agent states:

- Item 1 - wall to south not yet constructed, portion of wall has been constructed to act as gable wall of the structure on site. Provision and extent of boundary wall shown on enclosed drawings and is set behind the sightlines from the junction. Details of roadside verge agreed on site with Municipal District Engineer. Existing service pole nearest roadside junction to be set back.
- Item 2 - revised existing site layout drawing enclosed showing distances from roads edge of all walls and structures on site with a further proposed site drawing after completion, proposed to retain the existing gable walls of the sheds as constructed on site which is 2.3m high and paint the wall and steel stanchions from the gable sheeting down to ground level in an environmental green colour. Proposed new wall from the shed to the junction constructed in 150mm

blockwork to a height of 1.8m with precast concrete coping on top with wall rendered in plaster finish to roadside face. Landscaping plan submitted.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Permission was granted by Kilkenny County Council subject to 10 conditions which include the following:

- Sightlines as proposed under PA Ref. P17/417 – 90m in both directions;
- Roadside verge treatment in front of wall as per drawing of 30 January 2020 and existing service poles set back to revised boundary;
- All pre-cast concrete walls on site to be removed in full save for wall that forms western boundary of the shed. This includes splay walls on both sides of 'new entrance'
- Northern edge of entrance splay to accord with proposal as per site layout plan in PA Ref. P17/417;
- Development designed and undertaken to minimise waste production;

3.2. Planning Authority Reports

3.2.1. Planning Reports

First Report – signed 16 April 2019

- Details referrals, planning history, submissions received and development plan policy.
- Assessment outlines the site location, the proposed development and the report from the Roads Design Section.
- Sit inspection noted pre-cast concrete walls erected on site which detract from visual amenities of the area and noted that as per original application, applicant proposed to construct roadside wall in reinforced concrete with brick pattern.

- Applicant granted permission previously for building to be set-back within the site with current proposal extending agricultural structure closer to the road incorporating the roadside boundary wall within the wall of the structure.
- Site layout plan does not accurately reflect the existing distances from roadside boundary on the site.
- Height and finish of mass concrete walls considered out of character with rural area.
- No real likelihood of significant effects on the environment and EIAR not required.
- Screening for AA completed with no significant impact likely.
- Further Information Required

Habitats Directive Project Screening Assessment

- Conclusion – proposal not anticipated to affect Natura 2000 sites and no potential impacts anticipated. It is concluded that significant impacts can be ruled out or AA not required.

Further Information Request

1. You had previously indicated that a boundary wall was to be provided from the new entrance back to the public road junction as per application P17/417. This was to be set behind the sightlines. This has not been constructed and appears to have incorporated a section of it into the new lean-to extension.

You are requested to clarify the provision and extent of the boundary wall. In order to verify that the sightlines from the public road junction are not obstructed by the development roadside boundary, you are requested to carry out an accurate and detailed survey of the existing road and site boundaries to demonstrate on a detailed drawing that unobstructed sightlines can be achieved.

You are requested to agree details of the roadside verge treatment in front of the wall with the Municipal District Engineer and to include this detail on the drawings and submit the drawing for consideration.

Due to narrow cross section of the existing road the existing service poles shall be set back to the revised boundary line as the road edge definition will be altered by the proposed development at this location. This shall be detailed on the drawings.

2. (a) you are requested to submit a detailed and clearly annotated (i) existing site layout plan and (ii) proposed site layout plan showing distances from the road of all walls and structures.

(b) you are advised that the Planning Authority has concerns relating to the height and finishes of the existing walls fronting onto the public road. You are requested to submit revised proposals for walls that are more suited to this rural location with regard to heights and finishes. Details of location, elevations and materials to be submitted.

(c) a landscaping scheme is requested to be submitted in order to lessen the impact of the proposed development on the surrounding landscape. Landscaping works should not impact negatively on sightlines as required under Item 1 above.

It is noted that the applicant requested an extension of time to address further information request.

Second Planning Report – signed 21 February 2020.

- Details the original report and response to further information and Road Design Office submission on FI. Following same, an assessment states:
- Having regard to complete documentation submitted the referral responses and third party submissions received recommended permission be granted for the proposal.
- Recommended that with the exception of the pre-cast concrete wall that forms part of the wall of the shed, that all other boundary walls are of block work and do not exceed 1.85m high are capped and plastered on the side facing the road.
- Note reference in Roads report to landholding however as per the landownership map the applicant appears to have sufficient interest to carry out all required works within the lands outlined in blue.
- EIA conclusion provided as per above.
- Concluded that having regard to policies and objectives of the current Kilkenny CDP and the location of the proposed agricultural structure with(in) an existing farm yard complex, considered proposed development would not seriously injure the amenities of the area and if constructed in accordance with the attached

conditions, proposed development would accord with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

Road Design Office

First Report dated 12 April 2019

- Site located at junction of two cul-de-sacs on a local road and has a narrow cross section. Junction has restricted visibility and existing access located at junction has restricted visibility.
- Applicant indicated that a boundary wall be provided from new entrance back to the public road junction which was to be set behind the sightlines and applicant has not been constructed the full extent of the indicated wall and appears to have incorporated a section of it into new lean-to extension.
- Applicant to be requested to clarify provision and extent of boundary wall and in order to verify that sightlines from public road junction are not obstructed by the development roadside boundary, requested to carry out a detailed survey of existing road and site boundaries to demonstrate that unobstructed sightlines can be achieved.
- Applicant requested to agree detail of roadside verge treatment in front of wall with Municipal District Engineer and include detail on drawings and submit same for further consideration. Due to narrow cross section of existing road, existing service poles shall be set back to revised boundary line as the road edge definition will be altered and existing drainage should not be impacted.
- Road opening licence required.

Second Report dated 19 February 2020

- Development subject to previous grant of permission under Ref. P17/417 where indicated that 90m unobstructed sightlines could be achieved from proposed development access to the north.
- Access constructed and sightlines not available in this direction, it was also indicated that no adjustment to hedgerow was required to provide the sightline.

- As constructed entrance wing wall and existing hedgerow impede the sightline and applicant shall be conditioned to rectify the issue and provide sightlines required under PA Ref. P17/417.
- Appears landholding map (blue outline) appears incorrect but suspected that hedgerow affecting visibility is within the landholding but this should be clarified.
- Applicant conditioned to provide roadside verge treatment in from of wall as discussed with Municipal District Engineer and indicated on drawings. Due to narrow cross section of existing road, existing service poles shall be set back to revised boundary line as the road edge definition will be altered and existing drainage should not be impacted.
- Condition required to ensure that proposed landscape hedge does not interfere with visibility splay for the junction and alternative landscaping treatment could be considered to ensure visibility not affected.
- Road opening licence required.

Environment Section

- No objection subject to conditions relating to stormwater, waste production and soiled water.

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

3.4.1. Two submissions received from appellants with matters arising outlined in the grounds of appeal at Section 6.1 below.

4.0 Planning History

4.1. **Ref. 17/417** – permission granted for the construction of 1 bay extension to round roof shed, lean to shed, slatted underground tank and easy feeding system with new dungstead, new site entrance and closure of existing entrance.

5.0 Policy Context

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

Agriculture is addressed in Section 6.2 of the Plan. Section 6.2.4 outlines the Development Management Standards for agriculture and includes the following:

- A high standard of design and maintenance will be required in all developments in rural areas.
- Agriculture developments will be constructed and located so as to ensure that there is no threat of pollution to ground or surface waters.
- Buildings and structures in visually sensitive areas will be required to:
 - be sited as unobtrusively as possible;
 - be clustered to form a distinct and unified feature in the landscape;
 - utilise suitable materials and colours; and
 - utilise native species in screen planting
- Fencing in upland or highly scenic areas (See Section 8.2.10 Landscape) will not normally be permitted unless such fencing is essential to the viability of the farm and that it conforms to the best agricultural practice. The nature of the material to be used, the height of the fence, and in the case of a wire fence the type of wire to be used will be taken into account. Barbed-wire will not be used for the top line of wire. Stiles or gates at appropriate places will be required.

5.2. Natural Heritage Designations

- 5.2.1. The site is located c. 0.8km from the River Nore SPA - Site Code 004233 and the River Barrow and River Nore SAC – Site Code 002162.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development and to the nature and scale of the receiving environment 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

The grounds of appeal received from Patrick Phelan are summarised as follows:

- Permission granted to extend eastward side of the existing round roof shed but at no point was permission granted to extend the 1 bay round roof shed onto the road to within 1.52m of the roadside at its shortest point.
- Permission granted to build a 2.1m high roadside boundary wall with the wall now built 2.4m high and above it is a galvanised structure in excess of 20 feet.
- Four rolled steel joists contained within the roadside boundary wall with the structure a clear and obvious danger to the general public using the road daily.
- Only reason for boundary wall was to allow for existing structure to be extended to westward side of development, with 16 acres available to the developer and every other farmer on the road keeping barns well within property boundaries.
- Extension at westward side must be removed immediately including the mass concrete roadside boundary wall, wall from existing structure to roadside boundary wall, concrete floor poured at west side of the structure, four rolled steel joists within boundary wall and galvanised and supporting steel frame.
- Dry stone wall and hedge row must be reinstated.
- Due to proximity of development to existing service poles, one of overhead telephone wires severed and remains on the ground beside the entrance wall to the north of the site.
- To set back existing service poles extension to westward side of the development has to be demolished completely with no other way of preventing this structure from damaging overhead cables with waste wrapping getting caught up on service poles with photo attached showing proximity of westward side of structure to service poles.

- Amount of waste material, including sharp stones, being spread across the road at entrance to the site is distressing making it unpleasant for walkers and cyclists.
- Mass concrete entrance recognised as a degradation of the visual amenity of the area and pleased to see it demolished.
- In relation to waste production, the development is at present being used as a dumping ground for excess soil, rubble and waste material from another site opposite the playground in Ballyragget with photo attached showing material being dumped.
- Owner has shown total disregard for planning process continuing to do as he pleases.
- Request Council endeavour to remove dangerous and unsightly development, reinstate stone wall and hedge, request site is visited and that waste management and planning laws are complied with.
- Additional letter from Elizabeth Phelan outlines strong objection to development given it is unsightly particularly the concrete wall directly opposite her entrance which creates a high risk of passing cars colliding with the wall.
- Children walking to school endangered by heavy machinery using the entrance with the road having become muddy and slippery and strongly urge that planning laws are enforced as proposal takes from natural beauty of the area.

6.2. Applicant Response to Appeal

- 6.2.1. No response received.

6.3. Planning Authority Response

- 6.3.1. Response received on 6 April 2020 states that the Planning Authority has no further comments.

6.4. Observations

- 6.4.1. No observations received.

7.0 Assessment

7.1. There are a number of matters to address in this case which I consider as follows:

- Principle of Development
- Sight lines and Traffic Safety
- Visual Impact
- Other Matters
- Appropriate Assessment

7.2. Principle of Development

7.2.1. There is a somewhat protracted planning history in respect of this development with the appellant stating that the owner of the site has shown total disregard for the planning process. As outlined above, permission was granted under **Ref. 17/417** for the construction of a 1 bay extension to the round roof shed, lean to shed, slatted underground tank and easy feeding system with new dungstead, new site entrance and the closure of existing entrance. The bay extension was on the eastern side of the existing structure. Drawing 3 submitted with the application outlines the extent of the proposed development permitted under that permission including the extension to the east and the new entrance design.

7.2.2. Following same, the applicant decided to construct a similar one bay extension to the western side of the structure which directly adjoins the road and effectively providing that the western elevation of the structure would become the site boundary adjoining the road. The new entrance to the north of the site which was constructed is also materially different to that permitted providing a much more expansive wing-wall to the north. This wing wall which I discuss below is of a considerable height and visually obtrusive at c12m in length. It is these elements, amongst other more ancillary elements, that is subject of this appeal and for which retention is sought. While it is unfortunate that the applicant decided to construct the development subject of this appeal without the benefit of planning permission and to build a much altered entrance, the Board is not an enforcement authority and is required to assess the proposal before it on its merits. While I address visual impact and traffic safety below, I consider that the principle of developing the shed structure up to the

roadside edge is acceptable and is a form which would be common within the rural landscape. While I note the appellants comment that every other farmer on the road keeps barns well within property boundaries, this is not a policy provision in planning terms. This is a narrow country road which is a cul-de-sac with little traffic. There is c.1.5m at the shortest point between the structure and the roadside edge. I consider that in principle the proposal is acceptable.

7.3. Sight lines and Traffic Safety

- 7.3.1. I would note at the outset that this roadway is a cul-de-sac with a modest number of residential properties and agricultural holdings and entrances to the north of the site and therefore it is lightly trafficked. Notwithstanding, it is imperative that each entrance permitted and constructed has appropriate sightlines. There are two matters arising in respect of sightlines. Firstly, the northern entrance to the farmyard and secondly, the treatment of the southern boundary at the junction to the other cul-de-sac and ensuring that sightlines from this junction can be maintained.
- 7.3.2. In relation to the northern entrance to the farmyard, I would note that the previous permission granted outlined the ability to achieve sightlines to the north from the new entrance, which as I outline above, was a more modest entrance arrangement. Drawing 3 submitted with the original application outlines the extent of the proposed development permitted under P17/417 including the new entrance design. Sightlines of 90m were shown to be achievable in both directions. The applicant then constructed an entirely different access arrangement which is outlined in Drawing 4 of the original submission which includes a pre-cast concrete wall which I consider is unsightly and over engineered and which it is proposed to retain except for the northern most 2.65m. This drawing outlines the ability to achieve 90m sightlines by demolishing the most northerly 2.65m of the existing entrance wall to and removing 6m of the boundary hedgerow and set back this area. As I outline below in relation to visual impact this wall is unsightly and over engineered and should be removed entirely both the 2.65m proposed and the remaining c. 9.5m of the 12m length to the north of the entrance and the 4.4m to the south of the entrance. The drawings are lacking in detail particularly in terms of the heights of the walls both the north and south and this is unsatisfactory. I would also note that the Planning Authority included a condition (No. 6) which requires that all pre-cast concrete walls on the site shall be removed in full, save for the wall of the shed structure. I consider that if the

Board are minded to grant permission that a condition expressly requiring written agreement on the demolition of this wall and the design of a new one is necessary.

7.3.3. In relation to the treatment of the southern boundary of the site with the junction to the cul-de-sac, further information was requested in relation to the treatment of this section. In this regard Item 1 of same stated that it had previously been indicated that a boundary wall was to be provided from the new entrance back to the public road junction (south) as per application P17/417. This was to be set behind the sightlines. This has not been constructed and appears to have incorporated a section of it into the new lean-to extension. The applicant was requested to clarify the provision and extent of the boundary wall. In order to verify that the sightlines from the public road junction are not obstructed by the development roadside boundary, they were requested to carry out an accurate and detailed survey of the existing road and site boundaries to demonstrate on a detailed drawing that unobstructed sightlines can be achieved. In response, the applicant's agent does not provide a detailed survey but states that the wall proposed has not yet been constructed, that a portion of the wall has been constructed to act as the gable wall of the agricultural development already on site. The provision and extent of the boundary wall is shown on the enclosed drawings. It is proposed that the new wall from the shed to the junction is constructed in 150mm blockwork to a height of 1.8m with precast concrete coping on top with wall rendered in plaster finish to roadside face. I consider that it is imperative that the detailed design of the wall should be agreed in writing with the Planning Authority.

7.3.4. I do not agree that the development of the shed structure as it has been constructed adjoining the public road would create a traffic hazard. It is set back from the road edge by in excess of 1.5m, and given how lightly trafficked this road is, there is not in my opinion a traffic safety concern. I would also note that the appellant's large splayed entrance is directly opposite the structure and provides a pulling in facility if required. I do not consider that the concern that children walking to school would be endangered by heavy machinery using the entrance with the road having become muddy and slippery is reasonable.

7.4. **Visual Impact**

7.4.1. Concern is expressed in the appeal grounds to the unsightly nature of the proposal particularly the concrete wall directly opposite her entrance, which the appellant states, creates a high risk of passing cars colliding with the wall. While I would agree that the element of the structure proposed for retention which now effectively forms the roadside boundary is of a considerable scale, it is an agricultural structure with rounded traditional forms which are common in the rural landscape. I note the measures proposed to paint and mitigate the impact of the structure and I consider that these are appropriate. As recognised by the appellant, the mass concrete entrance to the north of the site has in my opinion a greater visual impact on the visual amenity of the area. As outlined above it is proposed that the most northerly 2.65m of this is demolished which the appellant considers is a positive development. However the remaining c.9.5 m to the north of the entrance and 4.4m to the south of the entrance are proposed to be retained and I consider that these elements are visually incongruous and should be removed and replaced with a more appropriate wing wall arrangement. It is also proposed to provide a new boundary wall to the south of the site at the junction with the other cul-de-sac and I would consider that this will improve the visual amenity of the area although the height and design of the structure requires agreement by condition. I therefore do not agree that the shed structure would create a traffic hazard as outlined in the previous section nor do I consider that it creates a visually discordant structure within this area.

7.4.2. The appellant also requests that the dry stone wall and hedge row must be reinstated. I note that in the further information that hedging is proposed between the road edge and the structure and I would also note that areas of hedging have been removed elsewhere along this roadway to facilitate access points to new dwellings such as at the appellants own property. Therefore I do not consider that this request is reasonable.

7.5. **Other Matters**

7.5.1. Concern has been expressed at the proximity of the development to existing services poles with one of overhead telephone wires having been severed and remains on the ground beside the entrance wall to the north of the site. The further information request stated that due to the narrow cross section of the existing road the existing service poles shall be set back to the revised boundary line as the road edge definition will be altered by the proposed development at this location. This

shall be detailed on the drawings. I note that the proposed layout (No. B) submitted with the further information response notes that poles to the relocated and retained in the vicinity of the site and I consider that this is appropriate.

7.5.2. Concern is also expressed at the amount of waste material, including sharp stones, being spread across the road at the entrance to the site which it is considered is distressing making it unpleasant for walkers and cyclists. The roadway in the vicinity of the site was not covered in such material on the day of my visit, however there was some material on the road. It is imperative on the property owners in the vicinity of the site to ensure that no material from their properties impedes the public thoroughfare.

7.5.3. It is stated that the development is at present being used as a dumping ground for excess soil, rubble and waste material from another site opposite the playground in Ballyragget with a photo attached showing material being dumped. This is a matter for the Local Authority to address as the Board is not an enforcement authority or a licencing authority for waste. However I would note that it would not appear that permission has been granted on this site or a waste permit provided for such works and it may therefore be appropriate, if the Board are minded to grant permission to include a condition which prohibits the storage of waste not associated with the agricultural use of the site.

7.6. **Appropriate Assessment**

7.6.1. Having regard to nature and scale of the proposal which seeks to regularise the development which has taken place on site including a modest extension to a farm building and an agricultural entrance to an agricultural yard, no Appropriate Assessment issues arise given the absence of a pathway to the most proximate Natura 2000 sites, the River Nore SPA - Site Code 004233 and the River Barrow and River Nore SAC – Site Code 002162 which are located c. 0.8km to the west of the subject site. It is therefore 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

- 8.1.1. Given the location of the site within a rural area on a lightly trafficked cul-de-sac, I recommend that permission is granted for the proposal subject to the conditions outlined below.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature, scale and use of the extension to the farm building and the proposed alterations to improve the entrance, the road type, speed limit and existing geometry at the subject site, it is considered that the proposed development, which is for agricultural use only, would not be a traffic hazard and would be in keeping 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 30th day of January 2020, 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. (a) This permission does not permit the retention of the existing northern entrance arrangement. Prior to commencing further work on the site, a revised design shall be submitted for the entrance to the north of the site which shall be no greater than 1.8m and shall be finished with materials suitable for this rural location. This revised design shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

(b) Prior to commencing further work on the site further design details of the proposed southern wall including height, which shall not exceed 1.8m, and finishes

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

Reason: In the interest of visual amenity.

3. The entrance shall be for agricultural use only.

Reason: In the interest of traffic safety and orderly development

4. Water supply and drainage arrangements for the site, including the 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.

5. No waste materials or waste products not associated with the operation of the farm that this development serves shall be placed or stored on the site.

Reason: In the interest of public health and the visual amenities of the area.

6. 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 prior to commencement of development 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 made under section 48 of the Act be applied to the permission.

Una Crosse
Senior Planning Inspector

June 2020