



An
Bord
Pleanála

Inspector's Report

ABP-307389-20

Development	To construct a cubicle house with slatted tank, silage slab with effluent tank and ancillary works.
Location	Inchinapallas, Ballyhooly, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	204073
Applicant(s)	John & Jerry O Connor.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	Third Party
Appellant(s)	Mary Scanlan.
Observer(s)	None.
Date of Site Inspection	31 st July 2020.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. The appeal site is located within a dairy farm complex situated in a rural area on the northern slopes of the Blackwater River circa six kilometres west of Fermoy and 3km east of Ballyhooly in north County Cork. Access to the farmhouse and farmyard is via a narrow sloping roadway which runs north of the N72 Fermoy Mallow Road. The overall farm complex, which includes a dwellinghouse, is intersected by the roadway while the appeal site is solely on the eastern side of the roadway. The appeal site incorporates a milking parlour and dairy, two cubicle houses a silage slab. The nearest third-party dwelling is a bungalow located circa 100m to the south at the junction of the laneway and N72.

2.0 Proposed Development

2.1. The application involves permission for the construction of a cubicle house 445m² with slatted tank, silage slab 501m² with effluent tank and ancillary works. The proposed structures are to be located to the north of the existing buildings. Stormwater drainage proposals were clarified in response to the Council's request for additional information and will involve the provision of gullies with discharge to soakpits. The proposed sheds are intended to accommodate existing stock numbers. The design of the proposed cubicle house is in keeping with existing structures and finished in grey agryclad.

3.0 Planning Authority Decision

3.1. Decision

By order dated 22 April 2020 Cork County Council issued notification of its decision to grant permission and 27 conditions were attached including the following:

Condition 2. Surface water to be disposed of within the site by means of soakways and shall not be allowed to flow onto the public road.

Condition 3. Silt traps to be constructed on inlet to the soakpit.

Condition 4. Details regarding installation and maintenance of silt traps and other measures to be agreed prior to commencement of development.

Condition 7. Drainage grating and discharge pipe to soakway to be installed at the entrances to the site.

Condition 10. Number of livestock shall not exceed that for which adequate storage capacity is provided in accordance with SI No 605 of 2017, European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2017.

Condition 20. The total gross effluent storage capacity for livestock slurry, soiled waters farmyard manure runoff yard washings milking parlour/drain washings, silage effluents and contaminated rainwater in the farmyard shall be a minimum of 1783m³ Gross capacity. Consisting of the existing effluent storage tanks 1273m³ and the proposed effluent tanks of 510m³. No cattle shall be out wintered or fed on open yards, which shall be maintained clean to minimise the generation of soiled waters.

Condition 27. Silt fencing to be constructed prior to commencement of development to protect watercourses on site from run off of silt laden water.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial planner's report sought additional information, to clarify boundary treatment and surface water drainage. Clarity also in respect of whether the proposal was intended to facilitate further intensification of the dairy enterprise. Calculations required regarding effluent storage to demonstrate compliance with the requirements of the European Communities (Good Agricultural Practice for Protection of Waters Regulations 2017 SI No 605 of 2017).

Second planner's report indicates satisfaction with response to further information request and recommends permission subject to conditions.

3.2.2. Other Technical Reports

Area Engineer's report sought clarification regarding roadside boundary treatment and surface water proposals. Second report indicates no objection subject to a number of conditions.

Environment Report sought further information to clarify the location of the bored well and drainage layout. Clarity also to demonstrate that the proposal would not involve intensification of the dairy enterprise on the holding. Demonstration of compliance with the requirements of the European Communities Good Agricultural Practice for Protection of Waters Regulations 2017 SI No 605 of 2017 in terms of effluent storage capacity. Second report indicates no objection subject to conditions.

3.3. **Prescribed Bodies**

An Taisce submission asserts that a comprehensive slurry management plan is needed to identify all local watercourses and demonstrate full compliance with the Nitrates Directive. A feed management plan also required outlining proposals to curb methane emissions from the facility.

3.4. **Third Party Observations**

Submission from Mary Scanlan, Tigh na Seamrog objects to the development on the following grounds:

- Conditions of previous permission have not been complied with.
- Storm drain has insufficient capacity of all rainwater diverted due to increased construction of farm buildings. Washwater being allowed to flow onto the road.
- Negative impact on her house.
- Proposal too close to the public road and inappropriate buffer zone provided to L97217.
- Public notice is insufficient and planning application details incomplete.
- Proposal will lead to further intensification of farming. Effluent tank should be provided on the west of the farm to mitigate impact on the observer's dwelling and site.

4.0 **Planning History**

PL04.217961 (064461) Permission granted by the Board following third party appeal for Demolition of existing sheds, construction of a silage slab and apron in its place

and construction of a cubicle house and calf house with slatted tanks, extension to milking parlour and ancillary works.

5.0 Policy Context

5.1. Development Plan

The Cork County Development Plan 2014 refers.

13.11 Good Agricultural Practice for Protection of Waters

County Development Plan Objective GI 11-1 Protection from Agricultural Pollution

Protect the County's waters from agricultural pollution in accordance with the Nitrates Directive (91/676/EEC) through the implementation of the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 (SI 610 of 2010) or any future revised / additional requirements and ensuring that all agricultural development shall comply with those Regulations.

5.2. Natural Heritage Designations

The site is c300m north of the Blackwater River (Cork /Waterford) SAC Site Code 002170.

The site is 6.5km west of the Blackwater Callows SPA (Site Code 004094)

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the development, 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 appeal is submitted by Mary Scanlan, Tigh na Seamrog, Inchinpallas. Grounds of appeal are summarised as follows:

- Appellant's submission to local authority was not given due consideration.
- Conditions of previous permission have been breached.
- Further development will exacerbate problems arising from surface water discharge onto the local road and the N72.
- Transport Infrastructure Ireland and Cork National Road Office not consulted.
- Level of stock numbers appears to breach condition 4 of previous permission
- Significant cost and inconvenience to the appellant in appeal .
- Storm drain constructed in accordance with condition 7 of ABP does not have capacity for increased water.
- Significant negative impact on residential amenity.
- Contradiction on drawings which indicate existing gutters and down pipes are diverted to adjacent fields. Kerb running the length of the concrete area is impractical given that the area is used for parking tractors and reversing of milk lorry.
- Development too close to the road. L97217 being used as a private farm roadway.
- Drawings inaccurate - cow passage extends a further 100 m northeast to beyond building 16. This is a concreted passage higher than the L97217. Passage not taken into account in calculation of slurry soiled water.
- Pollution in adjacent fields as evidenced in grass discoloration.
- Close to 50% of the 248 acres outlined within the application are not in the applicants' ownership. Issue of breach of lease in the event of environmental issues arising.
- No issue with proposed effluent tank however development should be on the west of the farm.

6.2. Applicant Response

6.2.1 The response by Liam Slattery Civil Engineer on behalf of the first party is summarised as follows:

- Applicants John & Jerry O Conner are dairy farmers on 248 acres carrying 180 cows, 52 heifers 83 weanlings and 2 bulls. Require further animal housing along with slurry storage.
- Structures located to the north of the existing farmyard as they to mitigate impact on neighbour.
- Following previous permission, the Council agreed to install new storm water drains with road gullies on the L97217.
- Additional storm water arising from the proposed structures will be diverted to adjacent fields owned by the applicant.
- The addition of a kerb and natural barrier of roadside ditches will prevent surface water flowing onto the road.
- The location of the well meets the requirements of the Department of Agriculture Farm Building and Structure Specifications as per S123, Bovine Livestock Units and Reinforced Tanks Section 5.1 the proposed slatted tanks are greater than 60m away from the well. The well is regularly tested as required by Dairygold for all dairy farmers supplying milk.
- Livestock numbers have increased and farming enterprise has changed over the years. In 2006 there were 208 animals on the farm and now the applicants have 315 animals. In 2006 the farm comprised of a beef and dairy enterprise. Following the abolition of milk quotas and drop in beef prices the farm enterprise is now solely a dairy farm.
- Applicants have bought and leased additional lands in recent years to facilitate the livestock.

6.3. Planning Authority Response

6.3.1 The Planning Authority did not respond to the grounds of appeal.

6.4. Further Responses

6.4.1 The third-party appellant response to the first party response to the appeal is summarised as follows.

- Reiterates objective that the Board would refuse permission.
- Circa 50% of the lands indicated as under the applicant's control are not. Application should be invalidated.
- Application should have been invalidated. Declaration p12 2.23 signed by the agent whereas site notice signed by the applicants.
- Maintain contention that the drain lacks capacity for the volume of water/storm water on the L97217 resulting in water flowing onto the N72.
- TII and Cork National roads office were not informed of the application.
- Appellant's mother's property had been flooded by water runoff and storm water from this farm.
- First party has not addressed An Taisce observations.
- Area is within a designated scenic landscape.
- Decision of Cork County council is flawed.

7.0 Assessment

7.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposal and all submissions, I consider the key issues arising in this appeal for determination by the Board relate to the principle of the development and the impact on the residential and other amenities of the area. I note that the main concerns raised within the grounds of appeal refer to the disposal of surface water. The submissions by the third party appellant contains information not related to planning matters, which I have not had regard to.

7.2 The third-party appellant has questioned the validity of the application citing apparent inconsistencies in application detail specifically relating to surface water

proposals and questioning ownership / leaseholding and land under the control of the first party. As regards signatory for planning application and site notice, I note that sections of the application form and site notice are variously signed by applicant, and/ or agent as provided for within the Planning and Development Regulations 2001 as amended. As regards lands within the applicant's control I cannot verify the circumstances of landownership and leaseholding however I note that particularly in relation to the latter, agreements and arrangements may vary overtime. The farming business is adaptable and therefore it is reasonable that a degree of flexibility apply. I note that the Planning Authority was satisfied that the application was valid in accordance with the requirements of the Planning and Development Regulations 2001, as amended, and I would concur that this decision to treat the application as valid was correct.

- 7.3 As regards matters of enforcement the current appeal is not the appropriate forum to address such matters which are matters for the Local Authority. I consider that it is appropriate to determine the planning circumstances of the appeal case on its own merit.
- 7.4 On the matters raised within the grounds of appeal regarding the decision making process of the local authority and the Council's referral process, I note that procedures adopted by the Planning Authority are matters which are beyond the remit of the Board in terms of determining the application on its planning merit. As regards referral to prescribed bodies by the Board I note that having regard to the nature of the application and as the site does not abut the National road it is not considered necessary to refer the case to TII or National Road Design Office.
- 7.5 The appeal site is part of a well-established overall farm holding of approximately 248hectares. Application documentation indicates a herd of 180 cows, 52 heifers 83 weanlings and 2 bulls giving a total of 317 animals. It is evident that the works subject of the application are for the purpose of improving the efficiency and viability 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 including provision for adequate slurry storage.

- 7.6 The appellant's family home which is the nearest third-party dwelling is located within approximately 100m to the south of the farm. I note that the proposed shed is to the rear north of the existing agricultural structures and given its location and design is not visually prominent. As regards potential negative amenity impacts, I note the established nature of this farm complex and rural / agricultural character of the immediate area and I do not consider that any significant loss of residential amenity due or other nuisance will arise. I consider that subject to ongoing good farm management and practice no significant negative amenity impacts are likely.
- 7.7 The issue of surface water disposal is a key concern arising within the appeal. It is evident based on the submissions on the current appeal and having regard to the planning history on the site that surface water run-off is a particular difficulty in this area. The third-party appellant has outlined concerns with regard to run off from the farmyard flowing along the local roadway and onto the N72. I note that the previous decision by the Board in relation to development on the site included a condition requiring the construction of a storm water drainage system on the roadway from the farmyard to the junction of the local road with the N72. The system includes drainage channels, underground pipes and a number of roadside gulleys with discharge to the first party lands on the southern side of the N72. I note that the system was provided by the local authority at the developer's expense. The third-party appellant has raised concerns with regard to the adequacy and maintenance of this drainage system and has provided photographic evidence to illustrate particular problems arising during extreme rainfall events. I note that the construction and maintenance of the drainage system is beyond the remit of the Board in terms of the current appeal and is a matter for the local authority.
- 7.8 The current proposal is to provide for diversion of clean surface water to soakpits within the appeal site. A kerb line is proposed west of the existing cubicle house 6 to prevent rainwater runoff onto the public road and provide for discharge to a soakpit within the appeal site boundary. I note that the Area Engineer indicated satisfaction

with this proposal. I consider that based on the documentation provided the submitted proposals are appropriate.

- 7.9 As regards effluent storage I note calculations provided, in accordance with Table 2, Schedule 2 of the Nitrate Regulations. SI 605 of 2017 European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017. The calculations indicate that the existing stock numbers generate 1450m³ of slurry and existing and proposed effluent tanks will have a net capacity of 1455m³ thus giving a surplus capacity of 5m³. During milking season 180 cows generate 81m³ of dairy washing and 10m³ of soiled water. The effluent tanks have a net capacity of 163m³ giving a surplus of 91m³.
- 7.10 On the issue of appropriate assessment screening under the Habitats Directive (92\43\EEC) having regard to the nature and scale of the proposed development and nature of the receiving environment, the possible impacts arising from the project relate to possible impacts arising from farm waste. As the proposal relates to an existing farm enterprise and is intended to provide for effluent storage to cater for existing stock and thereby aid compliance with SI No 605/2017 – European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 I consider that it is reasonable to conclude that there is no potential for significant effects and that therefore Appropriate Assessment is not required. 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 Recommendation

I have read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising. I recommend that planning permission for the development be granted subject to the following conditions.

Reasons and Considerations

Having regard to the nature and extent of the proposed development and to the history of on-site agricultural activity, 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 and would therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out 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 points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

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

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

3. *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.

4. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the Planning Authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European 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. 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, to soakaways and

- (b) all soiled waters shall be directed to the slatted 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, public health and to ensure a proper standard of development.

6. Silt traps shall be provided on all surface water drainage channels. Details in this regard shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

Reason: To prevent water pollution.

7. All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the 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.

8. The roof and side cladding of the structures shall be coloured to match the existing buildings within the farm complex.

Reason: In the interest of visual amenity.

Bríd Maxwell
Planning Inspector

5th October 2020