



An
Bord
Pleanála

Inspector's Report

ABP-308106-20

Development	(A) Retention permission to retain the existing slatted house (B) construct an extension to the slatted house for cattle, complete with underground slatted slurry tank, manure pit with effluent channels and all associated ancillary site works.
Location	Dromartin, Ballyduff, Co Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20253
Applicant(s)	Derek Long.
Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to conditions
Type of Appeal	Third Party v Permission
Appellant(s)	Pauline and David Baitson
Observer(s)	None.
Date of Site Inspection	19 th October 2020.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. This appeal relates to a rural site located within the townland of Dromartin circa 3.6km to the southwest of Ballyduff and 4km to the northwest of Lixnaw Co Kerry and 3.6km to the east of Causeway, in County Kerry. Listowel is circa 13.5km to the northeast and Tralee 16km to the south. The area is characterised by predominantly agricultural activities with pockets of commercial forestry with extensive one-off housing. The appeal site which has a stated area of .162hectares is rectangular in shape and located to the rear of an existing single storey dwelling which appears to be currently unoccupied. Residential dwelling sites also adjoin to the east and west. On the appeal site is an open slatted house with monopitch roof and a shed / store with adjacent concrete yard. The site is accessed via an access road to the west of the dwelling.

2.0 Proposed Development

2.1. I note that the precise detail of the application was modified in response to the Council's request for additional information and is described in revised public notices as

“Retention permission to retain existing slatted house as constructed on site and Permission to construct an extension to the slatted house for cattle, complete with underground slatted slurry tank, manure pit with effluent channels and all associated site works.”

The shed for retention is approximately 108sq.m and the extension area is 195m². The structure is of mass concrete construction with roof cladding. A manure pit 37.6m² is proposed to the north east corner of the building

3.0 Planning Authority Decision

3.1. Decision

By order dated 12th August 2020 Kerry County issued notification of the decision to grant permission subject to eight largely standard conditions.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

Initial Planner's report noted that permission was granted previously for a slatted unit on this site however this was not constructed in accordance with the permission. As such the existing shed is unauthorised. A request for additional information sought amendments to incorporate retention of the existing slatted house and also required the provision of landholding details. Final report recommends permission subject to conditions.

3.2.2. Other Technical Reports

None

3.3. **Prescribed Bodies**

No submissions

3.4. **Third Party Observations**

3.4.1 Submission from Pauline and David Baitson and Greg Dunne who are neighbouring residents. Submissions outline objection to the proposal on grounds of negative visual impact and detrimental impact on residential amenity. Submissions assert that the site notice was inadequately displayed. Main concerns relate to noise disturbance, odour impacts, vermin and waste. Potential pollution impact on the River Cashin. Devaluation of property.

4.0 **Planning History**

20/95 Invalid

07/1981 Permission granted July 2007 to construct an easy feed cattle shed with slatted tank and all associated ancillaries.

01/592 Permission refused to retain cattle shed and complete with a fodder storage unit

06/4053 Refusal of permission for construction of easy feed cattle shed / machinery shed with slatted tank and associated ancillaries.

5.0 Policy Context

5.1. Development Plan

The Kerry County Development Plan 2015-2021 refers.

The site is within rural area type “Rural General”. These areas constitute the least sensitive landscapes throughout the County and from a visual impact point of view have the ability to absorb a moderate amount of development without significantly altering their character.

Chapter 13 Sets out Development Management Standards and Guidelines.

At 13.12 Agricultural Buildings

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

- Proximity to adjacent dwellings.
- The rural character of the area.
- Utilisation of natural landscape and land cover as screening.
- Waste management in terms of storage and disposal.
- Environmental carrying capacity.
- It is a requirement that agricultural buildings are designed, located and orientated in a manner that will minimise their environmental impacts. A number of exemptions apply to farm buildings as set out in Part 3 of the Planning and Development Regulations 2001-2013. These exemptions will generally only apply to farms in rural locations.
- All agricultural development that results in manure, soiled water and slurry etc shall comply with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 [S.I. No. 610 of 2010], as amended by European Communities (Good Agricultural Practice for Protection of Waters) (Amendment Regulations 2011)[S.I No 125 of 2011], and/or any substituting or amending regulations.

5.2. Natural Heritage Designations

- 5.2.1 The site is not within a designated area. The nearest such sites are
Kerry Head SPA within 6km
Lower River Shannon SAC within 2.6
Tralee Bay Complex SPA 11km south west
Akeragh Banna and Barrow Harbour SAC 11km to southwest

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 Pauline and David Baitson, Dromartin Lower residents of the dwelling adjacent to the east of the site. Grounds of appeal are summarised as follows:

- History of refusal on the site.
- Noise impact from weaning calves will cause significant disturbance to residential amenity.
- Negative visual impact
- Odour impact
- Vermin and Waste
- Pollution risk
- Devaluation of property.
- First party does not live close to the farm and does not appreciate the residential amenity impact.

6.2. Applicant Response

6.2.1 The response by Philip O Dwyer on behalf of the first party is summarised as follows:

- Permission previously granted on the site
- Site notice erected to satisfaction of the Planning Authority.
- Noise and odour will be reduced as a result of enclosure of the shed.
- Farmer undertakes to minimise potential odour impact from slurry spreading.
- Flies and rats not likely to be an issue.
- Black plastic wrapping appropriately collected and recycled.
- Slatted tank built to Department of Agriculture specifications. Leak proof and effluent landspread in summer. Pollution risk is minimal.
- Applicant intends to build a house to live close to the farm.
- Permission for unit is crucial to applicant's future in farming

6.3. Planning Authority Response

6.3.1 The response of Kerry County Council notes location in a rural area

- Permission granted for a larger farm shed 07/1981
- Slatted unit will improve environmental conditions within the farmyard.
- Proposed shed is modest in scale and deemed acceptable within the agricultural landscape.
- Letters of objection taken into consideration.

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 potential negative impact on the established residential amenity of the appellant's adjacent dwelling to the north east of the site with particular reference to noise and odour and visual impact.
- 7.2 The appeal site is part of an established overall farm holding of approximately 5.32 hectares at this location and 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. I also note that permission was previously granted for an easy feed slatted unit. (07/1981). Having regard to the established nature of the farm enterprise, 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.
- 7.3 As regards potential negative impacts on residential amenity the main concerns raised relate to odour noise and other disturbance as well as visual impact. The appellant's family home is located within approximately 27m to the east of the building and there is another third-party dwelling circa 55m to the west. I note that the existing hedge and trees to the eastern boundary of the site provide reasonable level of screening and additional landscaping could appropriately mitigate visual impact. I consider that the proposed shed will not be unduly prominent in the landscape. As regards potential negative amenity impacts, I note the established nature of this farm and rural / agricultural character of the immediate area and I do not consider that any significant loss of residential amenity due to noise odour or other nuisance will arise. I consider that subject to good farm management and practice no significant negative amenity impacts are likely. I would concur that the enclosure of the shed will potentially reduce current odour and noise levels arising.

The first party has outlined commitment to normal good practice with regard to waste and vermin control.

- 7.4 As regards effluent storage and pollution prevention I consider that details and calculations to ensure compliance with Table 2, Schedule 2 of the Nitrate Regulations. SI 605 of 2017 European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 can be subject to agreement with the planning authority and this can be addressed by condition.
- 7.5 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 retention and completion of the development as set out 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, and planning history on the appeal site in particular grant of permission 07/181 and to the existing character and pattern of

development in the vicinity, if it is considered that, subject to compliance with the conditions set out below, the proposed development to be retained and completed 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 as amended by further plans and particulars submitted on the 23rd June 2020 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. 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.

3. 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.

4. 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.

5. The landscaping of the development shall incorporate a continuous hedge of indigenous species using only indigenous deciduous trees and hedging species (e.g Holly, hawthorn, or beech) which shall be planted along the eastern boundary of the site.

Reason: In the interest of residential and visual amenity.

6. A minimum of 18 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.

7. *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.

8. 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.

9. The manure pit shall be constructed in accordance with Department of Agriculture, Food and the Marine specifications. The manure pit shall be properly maintained so as to prevent any leakage of manure through floors or walls. All seepage and soiled water from the proposed manure pit shall be connected to the proposed underground slurry storage tank.

Reason: In the interest of pollution control.

Bríd Maxwell

Planning Inspector

1st December 2020