



An
Bord
Pleanála

Inspector's Report

ABP-308433-20

Development	Height increase of 3.70 meters on haybarn.
Location	Rath House, Kilrush, Athy, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	20831
Applicant(s)	William Masterson
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Ian Valentine
Observer(s)	None
Date of Site Inspection	10 th of February 2021
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is located in a rural area called Kilrush, Athy, Co. Kildare. It is approximately 12Km to the north-east of Athy, and 12km to the south-east of Kilcullen. It is east of the R418 Kilcullen-Athy Regional Road.
- 1.2. The subject site is an active farm (1.48ha), and the yard and buildings are located to the rear of a dwelling house.
- 1.3. The general topography is flat, the farm would appear to be a tillage farm, and Kilrush airport is located in close proximity to the farm.

2.0 Proposed Development

- 2.1. Permission is sought to increase the height of an existing haybarn by 3.7metres to an overall height of 10.9metres. The haybarn is located within an existing farmyard.

3.0 Planning Authority Decision

3.1. Decision

Kildare Co. Co. granted the proposed development with conditions.

Condition No. 2 stated before any development commences on site the hedgerow to the north of the entrance must be setback to provide the required sightline in accordance with the parent permission, 17/1302 (ABP – 301326). And asphalt is provided in the bell mouth recessed entrance.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

- There is no proposal to increase the floor area of the barn. The existing haybarn is screened from public view, and the development will not pose any significant negative visual impact.
- The third party concerns regarding the entrance can be dealt with by way of condition.

- No contributions are applicable.

3.2.2. **Other Technical Reports**

Water Services – No objection

Environment Section : No objection

Roads: The hedgerow shall be set back in accordance with the parent permission granted under ABP – 301326-18.

3.3. **Third Party Observations**

Ian Valentine also objected to the proposed development on the following grounds:

- Noncompliance of previous conditions
- Road safety
- Intensification of the site
- Sightlines
- Section 35 should be considered

4.0 **Planning History**

ABP 301326 (Planning Ref: 17/1302)

The planning authority and the Board granted planning permission for a 36.6m x 18.3m haybarn and associated site works.

Planning Reference 17/291

Permission granted for a 500,000 gallon slurry tank lagoon, and this was not constructed.

Planning Reference 10/1018

Permission for a two-storey dwelling to the front of the farmyard. Condition No. 8 requires that the front boundary wall hedge be removed and setback to provide sightlines.

5.0 Policy Context

5.1. Development Plan

Kildare County Development Plan

Chapter 10 refers to rural development and chapter 17 refers to Development Management Standards.

Section 17.9.8 of Chapter 17 refers to Agricultural Developments. It states that the Council will require that buildings be sited as unobtrusively as possible and that the finishes and colours used blend into the surroundings. It is further stated that Other considerations which will arise in such developments will be traffic safety, pollution control, and the satisfactory treatment of effluents, smells and noise. **AG1:** Support agricultural development and encourage the continuation of agriculture as a contributory means of maintaining population in the rural area.

5.2. Natural Heritage Designations

The River Barrow and Nore SACX (site Code 002162) is c.5km to the north-west of the site.

5.3. EIA Screening

Having regard to the planning history of the site, the brownfield nature of the subject site, together with the scale of the proposed 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

Mr. Ian Valentine has taken this third-party appeal against the planning authority's decision to grant planning permission for the proposed development. The appellant is frustrated that the applicant has not complied with previous conditions.

- Under 301326 permission was granted for the construction of a haybarn with a height of 7.85metres. Condition No. 2 of the permission required the hedgerow to the north of existing entrance to be setback to provide the required visibility. The hedgerow has not been setback to date.
- Development Management Guidelines 2007 state that when a planning authority are making a decision on a planning application, non-compliance with previous permissions is a consideration, and the applicant has not complied with two previous planning permissions in respect of the entrance and conditions (10/1018 and 17/1302 (ABP 301326)), it is incomprehensible why Kildare Co. Co. has not used Section 35 of the Planning and Development Act to refuse the current planning application. In addition section 17.1.2 of the County Kildare Development Plan 2017-23 states the council may refuse permission for a development arising from past failures to comply with any previous permission where it is deemed appropriate to do so.
- Balz Judgement – in this instance the planning assessment has failed to address the fact the proposed development relies on a vehicular entrance which is in breach of planning conditions of two previous planning permissions which is a material planning consideration. There was no explanation in the assessment why the recommendation of Athy Municipal Council was not followed in the interests of transparency.
- Procedural – the applicant has used the incorrect Townland in the address of the public notices, which refer to Kilrush, when in fact the townland is Greatrath, Ballitore, Co. Kildare. The appeal should be dismissed.
- Traffic Hazard – The Board can refuse the proposed development on traffic safety grounds, and the safety of the entrance is directly related to the

entrance. In the previous appeal, the inspector noted the issue of non-compliance of conditions relating to a previous permission. Implying the applicant has ignored two previous permissions, and it is entirely wrong of Kildare Co. Co. to enable the applicant to get away with non-compliance of conditions for a third time.

- Condition No. 2 – Ambiguous wording - The condition states Prior to the commencement of any other development on site. The word 'other' is highly confusing and implies a future development and not the specific development.

6.2. Applicant Response

- The applicant's postal address is on all planning documentation, the accepted address locally is Kilrush, Athy. There has been no attempt to mislead the public. Since 2006 the applicant has submitted 5 No. planning applications all of which have the address Rath House, Kilrush, Athy. Greatrath is not a commonly used address.
- The existing entrance and configuration has existed since the applicant bought the property in 1982. It is still used by the farm and the dwelling only. However, it is accepted based on previous planning to setback the fence line to the north of the entrance to facilitate better sightlines. A hedge has been planted along the new line and the applicant is waiting for it to establish before removing the existing hedge. This is in the interests of local habitat. The existing hedge is kept low and this greatly improves the sightlines.
- There is no objection by the appellant to the proposed development.

6.3. Planning Authority Response

- The planning authority is satisfied the planning application was adequately publicised.
- There were two reports on file regarding the entrance from the Engineer and permission was recommended with conditions.
- The grounds of appeal would be best dealt with by enforcement.

- Given the nature and planning history, the planning authority do not accept the ambiguity relating to Condition No. 2. The condition should be retained, and perhaps reworded.

7.0 Assessment

- 7.1. The principle of the development has been previously assessed under **An Bord Pleanala Reference 301326-18**, which was permission granted by the planning authority and the Board for a 36m x 18m haybarn within an existing farmyard. The Board decision was made on 30th of July 2018, and the haybarn has been constructed. There is still ample time legally to implement all conditions attached to the original permission for the haybarn. This current appeal relates to the increasing in height of the permitted barn by 3.7metres.
- 7.2. The planning authority granted the proposed development, subject to 7No. conditions similar in content to the conditions attached by the Board on the parent permission for the haybarn in 2018. The current proposal is a modest development and does not involve an increase in floor area or the intensification of the existing haybarn. The haybarn is within an existing farmyard, and it blends into the rural countryside. It is a landuse appropriate to its agricultural setting and landuse. The Board should note, the third-party appeal cited no objection to the increased height of the structure.
- 7.3. I consider the entire grounds of the third-party appeal to be negligible. Firstly, the critical grounds cited on appeal are an enforcement matter for the planning authority and beyond the remit of the Board.
- The enforcement of Condition No. 2 of ABP 301326-18, relating to the setback of the northern boundary hedgerow at the entrance to the farm, is a matter for the planning authority. The setback of the northern hedgerow is required under planning reference 10/1018 (dwelling house fronting the farmyard) and ABP -301326-18, regardless of the Board's decision on this current appeal.
 - The Board cannot refuse the development under Section 35 of the Planning and Development Act. 2000 (as amended) relating to non-compliance of previous permissions.

- The Roads Department had no objection to the proposed development subject to certain conditions.
- Increasing the height of an existing permitted haybarn does not represent a traffic hazard.

7.4 The proposed development involves raising the height of the existing haybarn from 5.1 metres to 8.3metres, with an overall ridge height increase from 6.7metres to 10.4metres. This represents a modest material alteration to the existing permitted structure. I recommend the Board grant the increase in height subject to the conditions attached to parent permission.

7.5 The address cited in the public notices is consistent with the planning history and previous permissions relating to the property. The address Rath House, Kilrush, Athy is not misleading and was validated on a number of occasions by the planning authority. The Board should dismiss the procedural issue raised in the grounds of appeal that the site is located in Greatrath, because this address is not commonly used for the locally. Kilrush is the address used commonly to identify the location of the farm.

7.6 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and the location of the site in a rural area with no direct or indirect link to a European site and considering the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on a designated European site.

8.0 **Recommendation**

8.1. I recommend the planning authority's decision to grant planning permission for the proposed development be held by the Board.

9.0 Reasons and Considerations

Having regard to the planning history of the site, the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be seriously injurious to the visual amenities of the area, and would be acceptable in terms of traffic safety and convenience. Therefore, the proposed development would be in accordance 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 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. The proposed development shall comply in full with the terms and conditions of the parent permission for the hay shed granted by An Bord Pleanala under reference ABP -301326-18.

Reason: In the interest of clarity.

Caryn Coogan
Planning Inspector

23rd of February 2021