



An
Bord
Pleanála

Inspector's Report ABP.308435-20

Development	Retention of a machinery storage shed, access roadway, entrance and associated works
Location	Ballyfinnane, Fieries Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20/528
Applicant(s)	Richard Sheridan
Type of Application	Planning permission
Planning Authority Decision	Grant permission s.t. conditions
Type of Appeal	Third Party
Appellant(s)	Michael Horgan
Observer(s)	None
Date of Site Inspection	18 th May 2021
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1. The site is situated midway between the N70 (Castlemaine to Tralee road) and the N22 (Killarney to Tralee road), to the northwest of the village of Farranfore. The site is located approx. 3.3 km to the northwest of the village of Firies and approx. 300m to the south-east of the centre of the village of Ballyfinnane. It is an agricultural field on mainly flat ground in a marginal rural area. The site is accessed by means of a local road (L2019) which links Ballyfinnane Crossroads (to the north) with Firies (to the south). The appeal site is located on the eastern side of this road. A new entrance, which is gated, has been created with an access road leading to the site.
- 1.2. The site has a stated area of 2.0ha. The shed that is sought to be retained is located at the end of the access road. The site comprises a large field with the entrance from the public road in the southwest corner. There is a newly created access road leading along the southern boundary and then alongside the eastern boundary. The shed is within an area of the field that has been levelled and covered in hardcore and is screened by means of a mature hedgerow along the northern and eastern boundaries and by a landscaping berm around the southern and western boundaries of the field. The remainder of the field has been planted with semi-mature trees and there is a stream running alongside the eastern boundary of the site.

2.0 Proposed Development

- 2.1. Permission is being sought for the retention of the existing agricultural machinery shed, together with an access roadway and associated landscape screening. The shed is located close to the northern boundary of the screened area of the field at the north-eastern corner of the site. It is also proposed to retain the access road leading to the shed as well as the vehicular entrance from the public road. The stated purpose of the development is to provide storage for the applicant's machinery and equipment associated with his landscaping business.
- 2.2. The floor area of the proposed shed is 229.63m². The proposed shed is rectangular in shape with a double-pitched roof and a PVC cladding finish. The lower section of the external walls is plastered and painted. The site of the shed is enclosed by screen planting on all sides. The stormwater from the roof is collected and harvested via an underground storage tank and is used to irrigate much of the planting. The

access way that is proposed to be retained is 6m in width and travels eastwards from the entrance for a distance of c.140m and then northwards for a further c.70m and is covered in hardcore. There is a drainage ditch alongside the roadway from the entrance to the right-angled bend, which it joins the stream.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to three conditions. Condition 2 restricted the use of the shed to storage purposes of agricultural machinery only and prohibited use for any commercial or other agricultural uses. Condition 3 required the planting of native trees and hedges within the earth berm and otherwise, the landscaping of this feature in accordance with the submitted plans (14/09/20).

3.2. Planning Authority Reports

3.2.1. Planning Reports

Reference was made to the extensive planning history on the site which included the grant of outline permission for 8 houses in 2004 and the subsequent refusal of several planning applications for 5-7 houses by the Board. It was noted that there was also a previous planning refusal on the site for a similar development to that currently before the Board (by the same applicant), which related to the construction of a storage unit for tree surgeon services, vehicles and related machinery. The application had also sought to retain the access road, hardstand and entrance. The P.A. had decided to grant permission, but the Board refused the proposal on appeal on policy grounds and by reason of potential water pollution due to a lack of information on surface water management.

Reference was also made by the Area Planner to objective ES-25 in the current Development Plan which facilitates such development where it can be demonstrated that no suitable sites are present within the nearby settlement and that it would contribute to the local economy/community regeneration. Screening for EIA and AA

were carried out, but both were screened out. The following items of further information were requested on 11/08/20. The responses to FIR are also included: -

– **Full details of the nature of the proposed use** –

Response – applicants have a limited landholding nearby in Farranfore and require the shed for storage of agricultural and farm machinery on a seasonal basis. The family carries out sub-contracting work for local farmers throughout the year including hedgerow maintenance, tree surgery, land drainage and tree planting.

– **Details of the vehicular traffic that would be generated by the proposed development** –

Response – no frequent traffic as machinery used on seasonal basis, so that machinery is returned when seasonal work is completed.

– **Section drawings (North-South and East-West) showing the storage shed and existing and proposed berms** –

Response – cross sections and revised site layout provided.

It was concluded that permission should be granted.

3.2.2. Other Technical Reports

Fire Officer – It was considered that the proposed development is contrary to the building regulations as the Building Control Authority has no record of a valid commencement notice for the works. It was recommended that the application be deferred pending receipt of an application for regularisation.

County Archaeologist – no recorded monuments and site has previously been disturbed. No mitigation required.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Submission from third party appellant which is similar to grounds of appeal. The main points made may be summarised as follows:

- A similar development has already been refused by the Board.
- The site has been the subject of many previous refusals for housing developments.
- The applicant has had a proposal for retention of a garage on another site refused recently and the appellant is aware of another proposal whereby the applicant has been required to demolish a house that had been built without permission.

4.0 Planning History

01/906 – permission refused by P.A. for construction of 7 no. houses with wastewater disposal units and access roads in 2001.

04/564 – outline planning permission granted by P.A. in 2004 for 8 no. houses and an access road.

PL08.212284 – permission refused in 2004 by Board for 7 no. dwelling houses with access road and all dwellings to be served by a single treatment plant on site. Reasons related to risk of pollution of adjacent watercourse due to inadequate soil conditions and high water-table and proximity to stream. A second reason related to the distance from the local village and the substandard nature of the road with no pedestrian facilities.

PL08.220889 – permission refused in 2007 for permission consequent on a grant of outline permission for the construction of 5 dwelling houses served by a common sewage treatment plant and percolation area and a service road. The reasons related to the substantial difference between the outline permission and the application; potential risk of water pollution by reason of inadequate proposals for wastewater treatment (as before) and the non-traditional design of the dwellings.

PL08.228872 – permission refused by Board in 2008 for permission consequent on grant of outline permission for the erection of 5 traditional dwellings with a single WWTP and service road on similar grounds to 220889.

07/3034 – application for 5 dwelling houses served by common WWTP and service road was refused by P.A. on the grounds of non-compliance with rural settlement policy, excessive density of development in an unserviced area and precedent.

PL08.248436 – permission refused by Board in 2017 for construction of a storage unit for tree surgeon services, vehicles and related machinery, to retain a hard stand area and access road (same applicant). Permission was refused on policy grounds having regard to the CDP objective to facilitate small rural enterprises in certain rural areas where it can be demonstrated that there is no suitable site within the settlements nearby and that it would benefit the local community/economy. The Board was not satisfied that there were any locational requirements to justify the development at this location. A second reason related to the scale of the development and lack of toilet facilities combined with lack of details for surface water management on site, poor drainage characteristics and proximity to the stream, which it considered posed a potential risk of water pollution.

5.0 Policy Context

5.1. Development Plan

Kerry County Development Plan 2015-2021

- 5.1.1.** The site is located within an area zoned as **Rural General** (Section 3.2.1 of the Plan). This is one of three rural landscape types, which constitutes the least sensitive landscapes and have the ability to absorb a moderate amount of development without significantly altering their character. Chapter 12 sets out the objectives for landscape protection. **Policy ZL-1** seeks to protect the landscape of the county as a major economic asset and an invaluable amenity which contributes to people's lives. **Section 12.3.1** states that "it is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development".
- 5.1.2. Objective ES-25** – allows for small rural industrial, business, enterprise or community led enterprise in certain rural areas where it can be demonstrated that there is no suitable site within any settlement in the locality and the proposal would benefit the local economy or would contribute to community regeneration. Evidence to support this regeneration/benefit must be accompanied with any application.
- 5.1.3. Section 4.8.1** relates to agriculture and **Section 13.12** relates to Agricultural Buildings. It is stated that Agriculture is the second largest employer in the county. It

is an objective of the Council to support the sustainable development and diversification of the agricultural sector. The following matters 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 landcover as screening
- Waste management in terms of storage and disposal.
- Environmental carrying capacity.
- Requirement that buildings are designed, located and oriented in a manner that will minimise their environmental impacts.
- 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 (as amended).

6.0 The Appeal

6.1. Grounds of Appeal

The third-party appeal was submitted by Michael Horgan. The main points raised may be summarised as follows:

- **Similarity to scheme recently refused by Board** – this proposal has already been refused by the Board under PL08.248436.
- **Previous history** – The Board should note that there have been several refusals of permission relating to this site in the past including P.A. Ref. 06/2917, ABP Ref. PL08.220899, whereby permission was refused on the grounds of unsuitable soil conditions and a high water-table.
- **Design of development** – The site is located to the south of Ballyfinnane Village and the shed is the only structure on this side of the road between the village and Clounmellane Bridge on the River Maine.

- **Ecology** – the area is a favoured nesting place of the now nearly extinct Curlew, which goes all the way along the River Maine. Tree planting does not help the situation.
- **Retention permission** – The applicant has previously been refused permission to retain a garage at his own house. The appellant is aware of other applicants having to demolish a house where permission for retention has been refused. There is a big problem with retention applications in Co. Kerry and the planning authority has granted the majority of such applications.

6.2. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

7.0 Assessment

7.1.1. It is considered that the main issues arising from the appeal are as follows: -

- Principle of proposed development at this location
- Impact on visual amenity
- Impact on ecology of area
- Appropriate Assessment
- Environmental Impact Assessment

7.2. Principle of proposed development at this location

7.2.1. The site has been the subject of several planning decisions in the past, including refusal of permission for housing developments and for a development which is very similar to that now proposed for retention (248436). The Board considered that the proposed development was unacceptable as the development was considered to constitute a commercial development, which is not considered to be appropriate in this location on policy grounds. The Inspector's report had concluded that the proposed development was one which came within the remit of Policy ES25 in that it appeared to be a small rural enterprise development. However, it was considered that the developer had not provided adequate justification for the siting of the shed in

this location, outside of an established settlement, or any evidence of economic benefit to the local community. Specifically, the Inspector was not convinced that the proposed development arose from any specific local or rural-based activity or was related to any agricultural practice that may be conducted in the wider area.

7.2.2. In response to the request for further information, the developer has provided information to justify the location of the proposed development (14/09/20) as follows:

- The developer has a limited landholding in the vicinity, which is adjacent to his family home. He purchased the appeal site 4 years ago with the intention of constructing a farm machinery storage shed and reclaiming and draining the land to accommodate tree planting.
- The building that is proposed for retention is used for the seasonal storage of agricultural and farm machinery which he and his extended family use at various times of the year in connection with his family holding at Ardcrone, Currans, (folio provided), and for sub-contracting work in the local area. The sub-contracting work is carried out by the developer and his brothers for local farmers throughout the year and involves hedgerow maintenance, tree surgery, land drainage and tree planting.
- Very little traffic is generated by the use as a required piece of machinery will be collected from the storage building and will not be returned until that seasonal work (e.g., hedgerow trimming) has been completed. Typically, the stored agricultural machinery is dispatched and returned every 2-3 months.

7.2.3. It is considered that the applicant has provided reasonable justification for the siting of the development at this location and has demonstrated that the use is connected with the agricultural practices in the area which provides support for the local farmers in the wider community. The area is a rural one where agriculture is the predominant use, and there are no adjacent dwellings in proximity to the site. The applicant purchased the lands which extend beyond the hardstanding area with the shed for the purposes of tree planting and reclamation. There is evidence of both tree planting and drainage works having been carried out on the lands. It is considered that the development of the shed for the storage of agricultural machinery for use on local farms is consistent with the use of the lands and has a justifiable locational basis in this area, which addresses the first reason for refusal of the Board.

7.2.4. It is noted that the planning authority and/or the Board has refused several developments in the vicinity of the site during the past decade or so, (set out at 4.0 above). Most of these developments were residential in nature rather than agricultural and the reasons for refusal were based on matters such as settlement policy, housing need, density of development of one-off houses, inability to discharge effluent and traffic hazard. Thus, it is considered that these decisions are not directly comparable to the current proposal before the Board.

7.2.5. It is considered that provided that the proposed development would not be an obtrusive element in the landscape and would not adversely affect the visual and scenic amenities of the area, the proposed development of an agricultural shed for farming-related purposes on these lands is acceptable in principle.

7.3. Impact on visual amenity

7.3.1. The landscape within which the site is set is not particularly sensitivity and is zoned Rural General, which is the landscape character type that can absorb development more easily. I would agree with the assessment of the P.A. and that of the Inspector for 248436 that the magnitude of the impact, in terms of the scale and nature of the change is not that significant. This is mainly due to the topography of the area which is quite flat and to the siting of the shed at a point within the site which is well set back from the public road and is well screened by tree planting, established hedgerows and an earth berm. In addition, the design of the shed and the rural nature of the development help to integrate the structure into the landscape which is characterised by similar type structures. The roof is the main feature that is visible from outside the site, which generally blends in with the rural landscape. The earth berm is not particularly noticeable as it is screened by the recently planted trees and is also removed from the public road. It is considered, therefore, that the structure would have little or no impact on the visual amenities of the area, as it would present as an obscure view of a farm shed in a rural area.

7.4. Impact on ecology

7.4.1. The appellant states that the area along the northern side of the River Maine towards Currans village is a favourite nesting place of the curlew, and that the planting of

trees has not helped the situation. It is noted, however, that the site is not part of any designated site for the protection of birds nor is it proximate to any such site. The appellant has not provided any evidence that the site forms part of a habitat for this species or that the proposed development would have any direct or indirect effects on such a habitat. I would agree with the P.A. report and the previous inspector's report that the lands are agricultural in nature and are of limited ecological value.

7.4.2. The previous decision by the Board (248436) included a second reason for refusal which was based on the potential risk of water pollution by reason of the scale of the shed and lack of toilet facilities, combined with the lack of details of surface water management on the site, poor soil drainage characteristics and its location adjacent to a water body. The boundaries of the site to the east and the south are formed by a stream and a drainage ditch respectively. I note from the OS maps of the area and from my site inspection that the lands in the vicinity of the site have been subject to extensive drainage works. The site itself has also been subject to drainage works and a riparian strip has been created along the stream on the eastern boundary. I also noted an outfall which goes under the access drive and discharges to the drainage ditch. The applicant has advised that he has reclaimed the lands and carried out drainage works as part of the tree planting works and that the hardstanding area is drained by a soakaway and rain harvesting has been employed. All storm water from the roof is collected and harvested via underground storage and this water is used to irrigate the existing and future planting on the lands.

7.4.3. Although there was some evidence of ponding on the hardcore surfaces and rushes in the field adjoining the site, my inspection was undertaken following an extensive period of very heavy rain. In general, it is considered that the site, including the surface water elements, appears to be well maintained. The applicant has advised that there are no toilet facilities within the shed as there is no requirement for this due to the fact that there are no employees present and the machinery is just collected and returned. As the shed will house agricultural machinery, there is a potential risk of oil or hydrocarbon leaks. It is considered that any outstanding concerns regarding the surface drainage of the shed and hardstanding area could be addressed by means of a condition requiring details of the proposed system, including the installation of any hydrocarbon interceptors and attenuation measures,

to be submitted for approval to the planning authority, should the Board be minded to grant permission.

7.5. Appropriate Assessment

7.5.1. The site is located within 15km of eight European sites and is situated within another European site, the Dingle Peninsula SPA. The following sites are within the 15km radius of the appeal site.

Castlemaine Harbour SAC (000343)

Castlemaine Harbour SPA (002029)

Killarney National Park, MacGillycuddy Reeks and Caragh River Catchment SAC (000365)

Slieve Mish Mountains SAC (002185)

Ballyseedy Wood SAC (002112)

Tralee Bay Complex SPA (004188)

Tralee Bay and Maharees Peninsula West to Cloghane SAC (002070)

7.5.2. The appeal site is located outside of any of the designated sites and as such, no direct impacts will arise. It is located c.2.5km from Slieve Mish Mountains SAC. The lands in the vicinity are drained by the River Maine and the stream and drainage ditch alongside the boundaries of the site also discharge to the Maine, which ultimately meets the sea at Castlemaine Harbour which is designated as both an SPA and a SAC. However, the site of the appeal is located approx. 8km from these designated sites. Given the small scale and nature of the development, the distances involved and the absence of any wastewater discharges from the site, it is considered that there is no likelihood of indirect impacts on the European sites – Slieve Mish Mountains SAC, Castlemaine Harbour SAC or Castlemaine Harbour SPA, having regard to their Conservation Objectives.

7.5.3. The remainder of the European sites in the vicinity of the development site are in excess of 6 km from the site. Given the nature and small scale of the development, the distances involved and the absence of any known hydrological link between the development and these European sites, it is considered that Appropriate

Assessment can be ruled out in respect of these designated sites, having regard to their Conservation Objectives.

7.6 Environmental Impact Assessment

Having regard to the nature and scale of the proposed development in a rural area, 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.

8.0 Recommendation

It is recommended that planning permission be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Kerry County Development Plan 2015-2021, to the existing pattern of development in the area, and to the design, layout and limited scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development 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.

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 received by An Bord Pleanála on the 14th day of September 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. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, as amended, the use of the structure to be retained shall be restricted to a shed for the storage of agricultural machinery only (as specified in the lodged documentation), unless otherwise authorised by a prior grant of planning permission.

Reason: In the interest of environmental protection.

3. Water supply and drainage arrangements for the site, including the attenuation and disposal of surface 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 separately collected and disposed of directly in a sealed system to existing drains, streams or adequate soakpits, and
- (b) All contaminated waters shall be directed to a storage tank and shall pass through a petrol interceptor and shall not be allowed to discharge to adjoining drains, streams or to the public road.

Drainage details shall be submitted to and agreed in writing with the planning authority, within 3 months of the date of this order.

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

4. The landscaping scheme shown on Drawing Nos. PL-05A, PL051A and PL-105A as submitted to the planning authority on 18th day of June 2020 and on the 14th day of September 2020 shall be carried out within the first planting season following the date of this order and shall include native trees and hedges such as

Native Evergreens (Holly, Scots Pine, Yew)

Native Deciduous (Oak, elm, Ash, Birch, Hazel, Alder, Willow, Whitethorn, Blackthorn, Irish Whitebeam, Rowan).

Exotic species such as Cypress Leylandii, Rhododendron or Laurel shall not be used.

All planting shall be adequately protected from damage until established. Any plants which die, are removed, or become seriously damaged or diseased within a period of five years from the completion of the development shall be replaced within the next planting season with others of a similar size and species, unless otherwise agreed with the planning authority.

Reason:- In the interests of the visual amenity.

Mary Kennelly
Senior Planning Inspector

24th May 2021