



An  
Bord  
Pleanála

## Inspector's Report ABP-308813-20

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<b>Development</b>	Slatted unit and holding yard
<b>Location</b>	Kilfountain, Dingle, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20/840
<b>Applicant(s)</b>	Fionnán Lynch
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Robert Curran & Others John Patrick Curran & Ursula Noonan
<b>Observer(s)</b>	Friends of the Irish Environment An Taisce
<b>Date of Site Inspection</b>	16 <sup>th</sup> February, 2021
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

1.1. The site of the proposed development is located adjacent to an existing farm complex in the townland of Kilfountain, approximately 2km west of Dingle in County Kerry. The site is accessed from Regional Road R559 via Local Road L-12033 and is located on the north-west side of this road. It lies immediately south of an existing farm complex, the nearest structure of which is a slatted shed. It forms part of a large field. Residential development in the vicinity is sporadic, with the nearest houses beyond the farm complex being a short distance to the south.

## **2.0 Proposed Development**

2.1. The proposed development would comprise the construction of a slatted unit, associated underground tanks, a soiled holding yard and ancillary site works. The development would accommodate gross floor space of 1,656 square metres on a site area of 0.52 hectares.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 9<sup>th</sup> November 2020, Kerry County Council decided to grant permission for the proposed development subject to 8 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planner noted the site's planning history, development plan provisions, the County Archaeologist report, and third party submissions. It was considered the visual impact of the large building could be addressed if the roadside boundary was retained and supplemented with planting. The use of the public road as a farm road by the applicant was considered to be outside the remit of the planning application. It was considered that the proposed development would be far enough away from neighbouring properties such that it would not have a negative impact on residential amenity. A grant of permission subject to conditions was recommended.

### 3.2.2. Other Technical Reports

The County Archaeologist noted that there were no recorded monuments listed in proximity to the proposed development.

### 3.3. **Third Party Observations**

Objections to the proposal were received from Mary and Michael Curran, John Patrick Curran and Ursula Noonan, Pat and Catherine Hegarty, Helen and JP Leahy, Bernie and Thomas O'Connor, Tony O'Dowd and Eileen McAuliffe, John Joe and Anne Curran, Breandán and Mary Ó Murchú, and Moira Dillon and Patrick Healy. They raised concerns relating to use of the public road and the need to remove cows off the public road, road safety, impact on the Milltown River, road delays, impact on B&Bs, and inadequate information in the application on the landholding and in addressing the concerns.

Unsolicited information on behalf of the applicant was submitted to the planning authority on 9<sup>th</sup> November 2020 in the form of a Farm Inspection Report. The report states that there are currently 336 livestock, of which 120 are dairy cows, with the farm having the capacity to hold in excess of 400 mature bovine livestock. It was submitted that there is a need to increase housing to approach the farm's potential as the current facilities are operating at a maximum. It was also submitted that much of the access is provided on farm roads through the land and that direct use of the local road network is necessary approximately one week in four. Pollution incidents relating to the nearby river were stated not to have been caused by the farm operations.

## 4.0 **Planning History**

P.A. 99/1366

Permission was granted for a slatted shed.

## 5.0 Policy Context

### 5.1. Kerry County Development Plan

#### Development Management – Standards & Guidelines

##### *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.*

##### Rural Landscape

The site is located in an area that is designated 'Rural General'. These areas are considered to constitute the least sensitive landscapes from a visual impact perspective.

Objectives of the Plan include:

ZL-1: Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people's lives.

## 5.2. EIA Screening

Schedule 5 of the Planning and Development Regulations, 2001 (as amended), sets out Annex I and Annex II projects which mandatorily require an EIS. Parts 1 & 2 of Schedule 5 outline classes of development that require EIS corresponding to Annex I and Annex II. A slatted shed is not a development type listed under Part 1 or 2 of Schedule 5.

## 6.0 The Appeals

### 6.1. Appeal by Robert Curran & Others

The grounds of the appeal may be summarised as follows:

- There is insufficient evidence to prove compliance with EU (Good Agricultural Practice for Protection of Waters) Regulations 2017 and Article 5 of the European Communities Environmental Objectives (Surface Waters) Regulation, 2009. The impact on watercourses due to slurry disposal was not assessed. Use of the public road parallel to Milltown River does not comply with EU regulations and will result in intensification of the use of the road. The Council has not provided evidence of consultation with its Environment Department.
- The visual impact assessment does not meet standards set out in the Kerry County Development Plan.
- There are road safety concerns - sightlines have not been assessed, access on the road for emergency services would be gravely compromised, the volume and nature of the traffic likely generated has not been assessed, there would be an increase in HGV traffic turning off the R559, and there has been no road safety audit and no consultation with the Council's Roads Department.
- There would be a significant negative impact on the quality of life of residents and access to amenities of the area and the Council has not assessed the wider impacts of the development.

- Planning processes and procedures were not properly followed by the council, in particular the processing of unsolicited information after the five week submission period.

The appeal refers to non-compliance with a wide range of policies and objectives of Kerry County Development Plan and also provides a schedule of solutions to the issues raised in the appeal.

The submitted appendices include land maps and calculations relating to road use, emergency service access, photographs, copy of an email of complaint to Kerry County Council, and the appellants' comments on the applicant's unsolicited information submitted to the planning authority.

## **6.2. Appeal by John Patrick Curran, Ursula Noonan & Others**

The grounds of the appeal replicate the issues raised in the appeal by Robert Curran and others.

## **6.3. Applicant Response**

The applicant's response to the appeals by his agent may be synthesised as follows:

- The most appropriate location for the development is on the southern side of the existing complex as it is not possible to locate it at the northern side due to the nature and layout of the farm complex.
- It is rejected that there is going to be a substantial increase in animals on the farm and a substantial increase in animals using the public road.
- None of the objectors' houses are located along the road from the farmyard to the outermost part of the applicant's lands. There is a reluctance on the part of the objectors to use an alternative route which is freely available.
- The road in the vicinity of the farm has limited sight distances and high ditches obliging traffic to drive slowly. The animals using the road at particular times encourage speed reduction which is no greater than would be necessary for safe use of the road where there are limited passing points.

- The alternative route for the objectors going north, east and south is much safer.
- The Council's Planner suggests that the issue with the road is not a planning matter.
- The proposal is proper development, is sustainable and is necessary for the applicant to provide suitable accommodation for his animals.
- There will be no negative impact on the landscape or nearby amenities.
- A farm complex has existed at this location and the existing roads have been used to get to and from the fractured farmlands.
- The applicant is not in a position to swap lands with others.
- Due to the fractured nature of the lands it is not possible to incorporate internal roads between various sections. Farm roads have already been constructed where it is possible.
- The applicant submits that there will not be an intensification of use of the public road and, with the additional lands acquired, it gives greater options for reducing the amount of passes over the public road.
- Figures presented in the appeals about the time spent travelling on the road are not accepted.
- In reference to emergency vehicles not being able to access the road, this is a problem in many rural areas and at least there are alternative routes to various houses.
- There may be additional construction traffic over a short period but the extent of traffic flow along the road will be as exists today in the long term.
- It is not necessary to provide a traffic management plan because the existing farm developments are in place for many years and use of the road by animals has been ongoing for many years.
- Providing an alternative milking parlour far removed away from where existing farm buildings are concentrated is not in keeping with farm practice. Traffic volumes and current traffic disruptions do not warrant the provision of underpasses.

- Where the bridge over the Milltown Bridge is proposed would not create a problem for road users. Animals have always crossed this area and there have been no environmental complaints about the crossing point. There is no evidence or complaints in relation to river pollution.
- The applicant is not the only landowner with a number of field openings onto the road in this area.
- The applicant has no choice but to use the public road intermittently. There will not be any increase in the use and if there is it will be miniscule.
- The site is the least prominent location, downslope of existing buildings, with a lower floor level and ridge height than some of the existing buildings.
- It is not accepted that the farming activities have any detrimental impact on the quality of life of the objectors.
- A road safety audit is not necessary bearing in mind the negligible additional traffic flows along this road.
- Road signage, widening of the public road, and passing bays are a matter for the Roads Authority.

The applicant made a separate submission, referring to the Planner's report, the conditions of the planning authority's decision and stating that the appeals could be considered unsustainable and be dismissed.

In a further submission from an agricultural advisor, this reflected the unsolicited information submitted to the planning authority and addressed the farming system on the lands, including housing, machinery, land management, livestock and access. There was also a rebuttal of the appellants' submission on the applicant's unsolicited information to the planning authority.

Finally, there was an appendix to the general farm report, addressing slurry management, farm intensification, visual impact, fodder storage, wintering of livestock, waste storage, movement of livestock, and use of the public road. A number of proposals identified to alleviate the road impact include the purchase of a road sweeper, converting the most extreme field on the road from this year on to a silage field which will not be grazed until mid-July, and developing a farm road below the house to ensure cattle do not need to walk the road when using these fields.



#### 6.4. **Planning Authority Response**

I have no record of any response to the appeals from the planning authority.

#### 6.5. **Observations**

##### 6.5.1. ***Observation from Friends of the Irish Environment***

The Observer submits that the proposal is not sustainable development and should be refused as it is functionally and legally interdependent with an increase in the national dairy herd and would contribute to increased greenhouse emissions. It is submitted that, as a minimum, the development should be conditioned to ensure the end to the use of the public road. Further considerations are offered on the increase in environmental impact, on the applicant's view on entitlement to increased activity based on land purchase, and on methane impact.

##### 6.5.2. ***An Taisce***

The Observer considers that the application would facilitate significant intensification of farming operations, requiring full assessment of direct, indirect and cumulative impacts, including to water, air, climate and biodiversity from the effluent runoff, slurry spreading, increased silage production, etc. Reference is made to water pollution concerns, to greenhouse gas emissions, to ammonia emissions, and to biodiversity loss. The Board is asked to overturn the planning authority's decision, having regard to these concerns as well as to the local amenity impacts and the creation of road hazard.

#### 7.0 **Assessment**

##### 7.1. Introduction

I consider that the principal planning issues relating to the proposed development are the environmental capacity to accommodate the proposed development and the impact on the public road.

## 7.2. Environmental Capacity

The Board will note the existence of a substantial farm complex at the location of the proposed development. There is nothing in principle against the applicant seeking to further develop this farm operation. It is reasonable to seek to provide improved housing for animals and to seek to optimise farming operations.

I note the location for the proposed slatted shed. This would be reasonably sited, immediately adjoining the existing complex and forming a natural extension to this complex. There is no necessity to revisit the proposed building's siting, given its functional location and integration with the established farm complex. It would clearly be understood as a reasonable addition. It would not be anymore visually obtrusive or out of character with its rural location than any other part of the building complex.

One of the most significant difficulties in assessing this proposal, however, is the seriously deficient level of information on the farm operation. The following is noted:

- There are no details on the nature and extent of all farm buildings, holding areas, ancillary structures, and drainage provisions within the farm complex.
- There is limited information on the uses to which each structure is put.
- No information is provided on those buildings that house animals and the number and types of animals that are housed.
- There is no clear information provided on the types and numbers of animals, ongoing and seasonal, associated with this farm operation.
- As a result of no real understanding of the farm operation, there are no details provided on the waste generated within this farm complex.
- Due to this lack of information, there is no understanding about the capacity of the farmholding to accommodate the waste to be landspread or otherwise disposed of.
- Further to this, there is no understanding about the lands on which waste is intended to be spread, about the needs and capacity of these lands in taking such waste, about buffers to be provided, and about lands unsuited to landspreading.

- As a result of the lack of information, there can be no true understanding of the environmental impacts arising for soils and water quality arising from the management and disposal of waste generated by the farm operation.

Clearly, the proposed development would constitute a large additional building with the capacity to house a substantial number of additional animals with significant capacity to expand the waste generated. The applicant submits in the response to the appeals that the current herd size is 120 cows and the intention is to increase the herd to 135 cows on the completion of the slatted shed. Given the scale of the proposed slatted shed and the functioning of the farm with the established herd, there is clearly an opportunity to accommodate a substantially greater number than the additional 15 cows that appears to be proposed, together with the other existing stock. The information referenced above, together with the impact of the additional slatted shed, is necessary to allow for a reasonable assessment of the proposed development to ensure the farm is capable of accommodating such a substantial addition to its operations.

Having regard to the above, it is evident that, when due regard is had to the planning authority's Development Management Standards and Guidelines as they relate to agricultural buildings set out in the Kerry County Development Plan, one cannot reasonably take into account all that is required to be taken into account. There is a very significant lack of details on waste management in terms of storage and disposal. There is no understanding about the environmental carrying capacity of the farmholding. Details on manure, slurry, soiled water, etc. are not available to determine if the operation, including the new slatted shed, would comply with required European Communities Regulations.

A further issue that arises as a result of this lack of information on environmental carrying capacity of the holding is the matter of appropriate assessment. I understand and acknowledge that the site for the proposed development is remote from any European site, i.e. from Mount Brandon SAC to the east and Dingle Peninsula SPA to the south. However, with the lack of information on waste generation and waste management, there can be no reasonable assessment undertaken of the impacts on waterbodies or the potential of any pathways that may indirectly link with such Natura 2000 sites.

### 7.3. Impact on the Public Road

I first note that the proposed development and the farm operation would not have any significant traffic impact on the junction of the local road with the regional road (R559) to the south. There is no particular concern that additional vehicular traffic or traffic associated with the construction of the slatted shed would pose any traffic hazard at this junction. Sightlines are reasonable at the junction and the volumes and types of traffic that would be generated can be facilitated.

One of the key concerns of the appellants relates to the use of the local road to move animals to different parts of the farmholding. I accept that this most likely has been a practice which the applicant has engaged in for many years, given the nature and location of his various holdings north of his farm complex, with the latter being sited at the southern end of his overall holding. I also accept that regular movement of animals along this road up to a couple of times per day over a prolonged period could cause a significant public nuisance, and potential hazard, for other road users. While the practice is acknowledged, the concerns about increased activity arising from a substantial extension to the farming operation by way of the new slatted shed are legitimate in my opinion. Once again, however, the lack of information on what the farm accommodates at present, how the farm operates in relation to movement of animals, the likely scale of operations following the development of the proposed slatted shed, the inclusion of alternative management measures, etc. are not understood in this planning application. Contrary to the planning authority's position, I submit to the Board that the impact of the proposed development on the public road network should reasonably be considered as a potential impact that merits assessment. The intensification of farming activities and the consequential impacts on the public road network should not be beyond the scope of considerations in dealing with this application. Based on what is not known in this planning application, one cannot reasonably gauge the impact on the local road network.

I note the applicant's submission in response to the appeals that there is an alternative route for the objectors, which requires going north, east and south on the public road network instead of using the local road directly to the R559. It must be stated that this is a public road with public right to pass over it. Requiring others to take diversions due to the farm operation appears somewhat inappropriate. However, the applicant's response would indicate that there appears to be an

acceptance that the impact of the established farm practice does result in some impediments to the use of this public road. It may reasonably be determined that a potential significant increase in accommodation for animals would increase these impediments on the public road as the herd size increases.

## **8.0 Recommendation**

- 8.1. The details contained in the planning application to allow for an assessment of the planning and environmental impacts of the proposed development are seriously deficient. It is my submission that the Board is in no position to adequately assess the impacts of the proposed development and is not in a position to grant planning permission for the proposed development. The Board could reasonably seek further information based upon the deficiencies identified above. This would culminate in a substantial addition to the information that would be contained within the application and, on receipt, would require the publication of new public notices.
- 8.2. A further information request may include the following:
- The nature and extent of all farm buildings, holding areas, ancillary structures, and drainage provisions within the farm complex;
  - The uses to which each structure within the farm complex are put;
  - Identification of buildings that house animals and the number and types of animals that are housed and are proposed to be housed;
  - The types and numbers of animals associated with the existing and proposed farm operation, inclusive of seasonal changes;
  - The volumes, storage and management of all wastes generated by the existing and proposed development;
  - The capacity of the farmholding to accommodate the waste to be landspread or otherwise disposed of arising from the existing and proposed operations;
  - Details on the lands on which waste is intended to be spread, including the needs and capacity of these lands to accommodate waste, buffers to be

applied from watercourses, boundaries, etc, and identification of lands unsuited and not to be used for landspreading;

- Specific details on the timing and regularity of movement of animals on the public road;
- The likely additional impact of animal movements on the public road following the development of the proposed slatted shed, and
- Details of any alternative management measures relating to the movement of animals within and beyond the farm.

In the event that the Board consider that a refusal of permission is warranted based on the potential effects of the proposed development on European sites and the lack of information being available to assess such effects, I set out a reason for refusal below.

## 9.0 Reasons and Considerations

On the basis of the information provided with the application and the appeal, particularly in relation to the lack of details on slurry production, landspreading, land management, and surface water drainage, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of Mount Brandon Special Area of Conservation (Site Code: 000375) and Dingle Peninsula Special Protection Area (Site Code: 004153) in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission for the proposed development.

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Kevin Moore  
Senior Planning Inspector

24<sup>th</sup> February 2021