



An
Bord
Pleanála

Inspector's Report ABP-309340-21

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| Development | Retention of an existing boundary wall surrounding existing premises. |
| Location | Bayland E.D., Kilbora, Camolin, Co. Wexford. |
| Planning Authority | Wexford County Council |
| Planning Authority Reg. Ref. | 20200877 |
| Applicant(s) | O'Sullivan Agricultural Services Ltd. |
| Type of Application | Permission for Retention |
| Planning Authority Decision | Grant subject to conditions |
| Type of Appeal | Third Party v. Decision |
| Appellant(s) | Ronan Pellow |
| Observer(s) | None. |
| Date of Site Inspection | 27 th April, 2021 |
| Inspector | Robert Speer |

1.0 Site Location and Description

- 1.1. The proposed development site is located in the rural townland of Bayland, Co. Wexford, approximately 1.0km southwest of the village of Camolin and 4km northeast of Ferns, in an area that is typically rural in character and which is dominated by a rolling patchwork of agricultural fields interspersed with a considerable number of one-off rural dwelling houses most likely attributable to the development pressures arising from the proximity of the towns of Gorey and Enniscorthy and the N11 & M11 national roads.
- 1.2. The site itself has a stated site area of 1.81 hectares, is broadly rectangular in shape, and is occupied by an agricultural supplies business (that provides for the sale & storage of grain, feed & fertiliser etc.) which encompasses a series of large sheds and several concrete aprons / open yard areas. The full extent of the site perimeter to the southeast, along with the southernmost sections of the north-eastern and south-western site boundaries, are defined by reinforced concrete walling which exceeds 3m high in places and serves in part as a retaining wall between the development site and adjacent agricultural lands given the difference in ground level. In terms of topography, the site occupies an elevated position along the ridge of a localised rise with the lands falling south-eastwards towards the N11 National Road.

2.0 Proposed Development

- 2.1. The proposed development consists of the retention of an existing reinforced mass concrete wall which has been erected along the full extent of the site perimeter to the southeast in addition to the southernmost sections of the north-eastern and south-western site boundaries. This walling exceeds 3m in height in places and encloses a level surface within the adjacent concrete apron / yard which is used for the storage of various agricultural supplies as well as the manoeuvring of vehicles etc.
- 2.2. Along the roadside (north-eastern site boundary) it is proposed to screen the wall through the provision of an earthen mound planted with a double row of hedging atop same. Graded banking is also to be provided along the south-eastern site perimeter with a further double row of hedging supplemented by additional tree planting.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 6th January, 2021 the Planning Authority issued a notification of a decision to grant permission for the retention of the proposed development, subject to 3 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Requires the landscaping scheme received by the Planning Authority on 7th December, 2020 to be carried out within 12 No. months of the date of the final grant of permission.

Condition No. 3 – Prohibits the discharge of surface water runoff from roofs & paved areas etc. onto the public road.

3.2. Planning Authority Reports

3.2.1. *Planning Reports:*

An initial report details the site context, planning history, and the applicable policy considerations before stating that while the development will result in some additional visual impact when viewed on travelling northbound along the former N11 National Road, it is considered that the site could absorb the proposal given its setting and subject to the provision of additional landscaping / screening. The report subsequently recommends that more detailed landscaping proposals be sought by way of further information.

Following the receipt of a response to a request for further information, a final report was prepared which recommended a grant of permission for retention, subject to conditions.

3.2.2. *Other Technical Reports:*

Chief Fire Officer: Advises of various fire safety requirements relevant to the proposed development.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3.4.1. A single submission was received from the appellant and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The development proposed for retention is unauthorised and does not comply with the terms and conditions of the grant of permission issued in respect of PA Ref. No. 20171472 / ABP Ref. No. ABP-300848-18.
- The development in question is being investigated for the purposes of planning enforcement by the Local Authority.
- The development impacts negatively on the residential amenity of the appellant's dwelling house.

4.0 Planning History

4.1. *On Site:*

4.1.1. PA Ref. No. 20171472 / ABP Ref. No. ABP-300848-18. Was granted on appeal on 18th October, 2018 permitting O'Sullivan Agricultural Services Limited permission for 1. Retention of existing shed (783.79m²) which is being used as a loading area, and 2. Erection of a new shed (2,713.3m²) for use as grain, fertiliser and general store, relocation and up-grading of sewage treatment system and associated works.

4.1.2. PA Ref. No. 20170125. Was refused on 4th October, 2017 refusing O'Sullivan Agricultural Services Limited permission for 1. Retention of an existing shed (783.79m²) which is being used as a loading area; and 2. Erection of a new shed (2,713.3m²) for use as grain, fertiliser and general store, relocation and upgrading of the sewage treatment system and associated site works.

- The proposed development may endanger public safety by reason of traffic hazard because insufficient information has been submitted in the further information response to demonstrate that the existing site can accommodate the additional traffic generated by the proposal for retention and development. Furthermore, the proximity of the proposed entrance to a busy junction on a National Road would result in unsafe traffic turning movements. The proposed development would therefore be contrary to the proper planning and development of the area.

- The proposed development would be contrary to the car parking requirements standards as expressed in Table 39 and Section 18.29.7: Car Parking Standards of the Wexford County Development Plan, 2013-2019 and would therefore be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. Development Plan

5.1.1. ***Wexford County Development Plan, 2013-2019:***

Chapter 6: Employment, Economy and Enterprise:

Section 6.4.6: *Agriculture:*

Objective ED17: To promote the continued development of food production and processing within the county subject to complying with normal planning and environmental criteria and the development management standards in Chapter 18.

Objective ED20: To facilitate and support the development of sustainable agriculture practices and facilities within the county subject to complying with normal planning and environmental criteria and the development management standards in Chapter 18.

Chapter 14: Heritage:

Section 14.4: *Landscape:*

Section 14.4.2: *Landscape Character Assessment: (2) Lowlands:*

The Lowland area generally comprises gently undulating lands and relates to extensive areas of the county. This landscape has characteristics which provide it with a higher capacity to absorb development without causing significant visual intrusion. The landscape is characterised by higher population levels and more intensive agriculture. It is punctuated by many of the county's hills and ridges, the more sensitive of which have been defined as Landscapes of Greater Sensitivity

N.B. The proposed development site is located within the ‘*Lowlands*’ landscape unit as identified on Map No: 13: ‘*Landscape Units and Features*’ of the Development Plan (‘*Landscape Character Assessment*’).

Section 14.4.3: *Landscape Management*

Objective L01: To have regard to the Landscape Character Assessment and associated map contained in Volume 3, the Landscape and Landscape Assessment-Guidelines for Planning Authorities (2000) Draft and any updated versions of these guidelines published during the lifetime of the Plan, when assessing planning applications for development.

Objective L03: To ensure that developments are not unduly visually obtrusive in the landscape, in particular in the Upland, River Valley and Coastal landscape units and on or in the vicinity of Landscapes of Greater Sensitivity.

Objective L04: To require all developments to be appropriate in scale and sited, designed and landscaped having regard to their setting in the landscape so as to ensure that any potential adverse visual impacts are minimised.

Objective L09: To require developments to be sited, designed and landscaped in manner which has regard to the site specific characteristics of the natural and built landscape, for example, developments should be sited, designed and landscaped to minimise loss of natural features such as mature trees and hedging and built features.

Chapter 18: Development Management Standards:

Section 18.23: Agricultural Buildings:

The Council will encourage and facilitate agricultural development subject to the following criteria:

- The impact on the character and amenity of the immediate and surrounding area.

- There are no suitable redundant buildings on the farm holding to accommodate the development.
- The proposal will not impact negatively on the traffic and environment of the area.

The Council recognises the need for agricultural buildings and acknowledges that there is often a requirement for these structures to be significant in scale.

Notwithstanding this, these buildings will be required to be sympathetic to their surroundings in terms of scale, materials and finishes. The building should be sited as unobtrusively as possible and the finishes and colours used must ensure the building will blend into its surrounding and landscape. The use of appropriate roof colours of dark green and grey will be required. Where cladding is proposed it shall be dark in colour also.

5.2. Natural Heritage Designations

- 5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:
- The Slaney River Valley Special Area of Conservation (Site Code: 000781), approximately 550m southeast of the site.

5.3. EIA Screening

- 5.3.1. Having regard to the minor nature and scale of the development proposed for retention and completion, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, and the separation distance from the nearest sensitive location, 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

- The development proposed for retention comprises a 3m high reinforced concrete wall which was constructed during the implementation of the grant of permission issued in respect of ABP Ref. No. ABP-300848-18. It constitutes unauthorised development and is presently the subject of planning enforcement investigations by the Local Authority.
- Given its siting, the wall in question appears as a large and visually intrusive structure when viewed from the appellant's private residence.
- Due to the scale and nature of the structure, there are concerns that the area between the wall and the existing sheds will be roofed over thereby creating another enclosed shed and doubling the applicants' storage capacity with an associated unauthorised intensification of use.
- In light of non-compliance with the terms and conditions of ABP Ref. No. ABP-300848-18 (with particular reference to Condition Nos. 1, 5 & 6), any grant of permission for the subject proposal would be contrary to the proper planning and sustainable development of the area.
- There are serious concerns as regards the potential environmental impact attributable to the proposed development site. In this regard, it is submitted that the percolation area and septic tank required by ABP Ref. No. ABP-300848-18 would not appear to have been installed on site and it is further suggested that the applicant has no intention of undertaking the works required by Condition Nos. 5 & 6 of that grant of permission.
- By constructing the wall proposed for retention, the applicant has completely ignored the landscaping and boundary treatment requirements of Condition No. 7 of ABP Ref. No. ABP-300848-18.
- None of the pre-commencement conditions attached to ABP Ref. No. ABP-300848-18 have been complied with. In addition, there have been repeated breaches of the operational hours specified by Condition No. 2 of that grant of permission.

- Notwithstanding that the Board has no role in terms of planning enforcement, any assessment of the subject appeal must take into consideration the attitude of the applicant to compliance generally.
- In the absence of a visual impact assessment, the Board has no information before it as to allow for an assessment of the impact of the structure on the surrounding environment and properties.
- Despite the lodgement of a written representation by the appellant as regards the unauthorised development, the Planning Authority failed to issue a Warning Letter in accordance with its obligations under Section 152(1) of the Planning and Development Act, 2000, as amended.
- There can be no question that unauthorised development has been carried out by the applicant, however, the Planning Authority failed to issue an Enforcement Notice under Section 153(7) of the Act or to take any action whatsoever.
- The appellant was informed by the Planning Authority that the applicant would be afforded the opportunity to make a planning application to retain the unauthorised development. Such an approach makes a mockery of the planning system and the Council has refused to comply with its obligations to enforce against unauthorised development.
- Seeking to rectify unauthorised development by way of an application for retention serves to undermine the Board's authority.

6.2. Applicant Response

- There is no intention of ever constructing a roof over the area between the boundary wall and the existing shed (for the purposes of storing grain etc.). Furthermore, the design and structural integrity of the existing wall would not support a roof construction nor would it have the capacity to accommodate the pressures exerted arising from the storage of grain.
- It would not be appropriate to erect a grain store over the existing yard as has been suggested by the appellant given the presence of the attenuation tank. In this regard, the Board is advised that all of the applicant's grain stores

utilise underground aeration for the purpose of allowing cold air through the barley. Such an arrangement would not be possible within the existing yard as the attenuation tank and underground water pipes would cause significant difficulties.

- The appellant's allegations as regards non-compliance with several of the terms and conditions of ABP Ref. No. ABP-300848-18, including the hours of operation and the requirement to install a sewage treatment system, are rejected.
- The construction of the stores and yards etc. approved under ABP Ref. No. ABP-300848-18 is yet to be completed due to the restrictions on construction activity brought about by the COVID-19 pandemic, wet winters, and difficulties in retaining the builder on site. The main store has been completed and the lean-to general-purpose shed is at foundation level. The attenuation tank has been partially completed and measures 3m in depth x 4m wide x 40m in length. The pipes collecting the water from the yard and sheds are c. 90% complete. The pipes connecting the toilet facility to the new sewage treatment system have all been laid and the sewage tank has been purchased and is awaiting installation. It is anticipated that the works will be completed in full within 4 - 6 No. weeks, depending on COVID-19 restrictions and the weather.
- Following construction of the grain store, it was realised that the palisade fencing originally proposed would not be suitable for a number of reasons, namely, the control of rodents and the safety of vehicles operating on site.
- The applicant can no longer rely solely on the chemical control of rodents as continuous baiting is now illegal unless absolutely essential with rodenticides to be used only as a method of last resort given the need to protect birds of prey from poisoned rodents. The concrete wall as constructed provides an excellent physical barrier and will allow the applicant to rely less on rodenticides as required by the Department of Agriculture.

The '*Guidelines on Best Practice in the Use of Rodenticide Baits as Biocides in the European Union, 2013*' require operators '*To intercept rodents as they come on to sites, or into premises, to try to prevent the initiation and subsequent development of rodent infestations*' which indicates that a

physical barrier is crucial. They also state that an '*essential preliminary action is to conduct a thorough audit of the site to determine what changes are needed to prevent the initiation and build-up of rodent infestations*' and the only means of achieving this is through the construction of a solid concrete wall. For the same reasons, the applicant cannot have exposed earthen mounds close to grain stores as this would encourage the nesting of rodents.

- The concrete wall is safer from a traffic control perspective. Due to the sloping nature of the site and the heavy loads of grain brought into the yard at harvest times, the concrete wall will provide an added safety measure in preventing vehicles from breaching the site perimeter and falling into the adjoining field. It should also be noted that a retaining wall would be required in any event so as to avoid a drastic slope in the yard as without such a wall the slope would be too great and thus would pose a health and safety risk for LGV's using the site. Therefore, the fact that the retaining wall was essential has meant that the concrete wall is actually lower than the originally planned palisade fence.
- Other benefits of the concrete wall are a reduction in noise, the retention of dust within the yard, improved privacy, and added security.
- During construction of the roadside (north-eastern) boundary wall, it was decided to retain the existing ditch & hedging while the gap associated with the original field gate is to be planted following the receipt of permission.
- The wall along the south-eastern extent of the site has been setback c. 10ft. from the site boundary in order to allow that area to be planted with trees and shrubs as per the submitted landscaping plan.

6.3. Planning Authority Response

None.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The unauthorised nature of the works proposed for retention
- Alleged non-compliance / unauthorised development
- Impact on visual amenity
- Other issues
- Appropriate assessment

These are assessed as follows:

7.2. The Unauthorised Nature of the Works Proposed for Retention:

- 7.2.1. With respect to the appellant's wider concerns as regards the unauthorised nature of the wall for which permission for retention has been sought, it should be noted at the outset that the subject application would seem to have been purposively lodged in an effort to regularise the planning status of same. Moreover, it is entirely within the remit of the Planning Authority and the Board to assess any such application on its merits.
- 7.2.2. Furthermore, the lodgement and assessment of an application for retention should not prejudice any ongoing enforcement action by the Planning Authority. In this regard, it is of relevance to note the provisions of Section 162(2) of the Planning and Development Act, 2000, as amended, wherein it is stated that it shall not be a defence to a prosecution under Part VIII (Enforcement) of the Act if the defendant proves that he or she has applied for or has been granted permission (a) since the initiation of proceedings under this Part, (b) since the date of the sending of a warning letter under Section 152, or (c) since the date of service of an enforcement notice in a case of urgency in accordance with Section 155.

7.3. **Alleged Non-Compliance / Unauthorised Development:**

- 7.3.1. In relation to the appellant's allegations as regards wider instances of non-compliance with the terms and conditions of the grant of permission issued in respect of ABP Ref. No. ABP-300848-18, it should be noted that the Board has no function in respect of issues pertaining to enforcement and that the pursuit of such matters is generally the responsibility of the Planning Authority. Furthermore, while the appellant has sought to suggest that further unauthorised works could potentially be carried out on site arising from the retention of the subject wall (in reference to the possible roofing of that area between the wall and existing storage sheds), and notwithstanding that the applicant has ruled out the possibility of any such works, in my opinion, it would be inappropriate for the Board to speculate on such matters and I would reiterate that any future breaches of condition or instances of unauthorised development should be referred to the Planning Authority.
- 7.3.2. By way of further comment, and in light of the appellant's broader complaints as regards enforcement, I would submit that the Board is not the appropriate forum by which to question the approach employed by the Planning Authority with respect to matters of enforcement.

7.4. **Impact on Visual Amenity:**

- 7.4.1. In terms of assessing the visual impact of the proposed development, it is of relevance in the first instance to note that the subject site is located within the 'Lowlands' landscape character unit identified in Map No: 13: '*Landscape Units and Features*' of the Development Plan which is noted as having a higher capacity to absorb development without causing significant visual intrusion. However, I would acknowledge that the site occupies a relatively elevated position along the ridge of a localised rise with the result that clear views are available towards the perimeter walling proposed for retention from those lower-lying lands to the southeast and, in particular, from northbound traffic travelling along the N11 National Road which passes parallel to the south-eastern site boundary.
- 7.4.2. At this point, I would advise the Board that the works originally proposed on site under ABP Ref. No. ABP-300848-18 included for the erection of palisade fencing and screen planting (comprising 2 No. rows of polar & alder planting supplemented by laurel & copper beech hedging underplanting) along the southern extent of the

site perimeter. Condition No. 7 of that grant of permission subsequently required the submission of a scheme of boundary treatment to the Planning Authority, for written agreement, prior to commencement of development, which was to provide a screen along the north-eastern (roadside) and south-eastern boundaries, consisting predominantly of trees, shrubs and hedging capable of growing to the height of 3m, in order to screen the wider development in the interests of visual amenity.

7.4.3. The existing concrete walling has been erected as a replacement for the palisade fencing originally proposed, although its positioning has been recessed by approximately 10ft. into the site along the south-eastern perimeter so as to allow for screen planting in line with the submitted landscaping plan (the wall along the south-western site perimeter would also appear to have been recessed although no landscaping is proposed at this location). The height of the wall varies to some extent, however, its primary elevation when viewed from vantage points to the southeast (such as along the former N11 National Road) will appear as a 3m high construction over ground level with the retaining element of the structure to be hidden by a graded earthen slope. The updated landscaping proposals received by the Planning Authority on 7th December, 2020 in response to a request for further information aim to screen the south-eastern extent of the wall by planting 3 No. tree species (silver birch, field maple & sycamore) at 10-15m centres along the entirety of that boundary (with a tree height of 2m at the time of planting) supplemented by 2 No. species of hedgerow (laurel & whitethorn) planted continuously in double rows at 400mm intervals with a height of 500mm. It is envisaged that the subsequent growth and management of this landscaping will provide effective screening of the wall within 5 No. years of first planting.

7.4.4. Given the nature of the site location, including its elevated position relative to the lower-lying lands to the southeast, I would concede that the wall proposed for retention will be clearly visible from certain vantage points, with particular reference to northbound traffic travelling along the National Road. However, I am cognisant that consideration must be given to the wider site context, including the size & scale of the construction when compared to the adjacent grain stores & agricultural supply buildings whilst the surrounding 'Lowlands' landscape character unit is less visually sensitive and has a higher capacity to absorb development without causing significant visual intrusion. In my opinion, the visual impact of the wall is both

localised and not unduly significant when compared to that of the existing building complex on site. Indeed, I would suggest that the wall is not unlike other comparable agricultural construction prevalent in the open countryside (e.g. farm outbuildings, barns, cattle housing, silage pits / slabs etc), albeit on a larger scale. Furthermore, I am satisfied that the visual impact of the development will be sufficiently mitigated by way of the screen planting / landscaping proposed so that it will unduly detract from the prevailing character and amenity of the surrounding rural area. Therefore, I am amenable to the retention of the wall in question, subject to conditions.

7.5. Other Issues:

7.5.1. Surface Water & Wastewater Servicing Arrangements:

Concerns have been raised as regards the environmental impact of the development constructed to date on site and in this regard it has been suggested that the applicant has no intention to undertake the works required by Condition Nos. 5 & 6 of the grant of permission issued in respect of ABP Ref. No. ABP-300848-18 (Condition No. 5 requires the septic tank system to accord with the requirements of the EPA's "*Wastewater Treatment Manual – Treatment Systems for Single Houses*" while Condition No. 6 requires all uncontaminated surface waters to be directed to an attenuation tank or adequate soakpits). In response, the applicant has asserted that the construction works are not yet complete, although the pipework connecting the toilet to the sewage treatment system has been laid, the septic tank has been purchased and is awaiting installation, and the attenuation system has been partially completed.

7.5.2. In my opinion, any grant of permission for the subject proposal would not negate the applicant's obligations as regards adherence to all the other relevant terms and conditions of the grant of permission issued for ABP Ref. No. ABP-300848-18. Moreover, it was noted during the course of my site inspection that the septic tank and the surface water attenuation tank would appear to have been installed on site.

7.6. Appropriate Assessment:

7.6.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that

the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority should be upheld in this instance and that permission for retention and completion be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to the nature and scale of the development to be retained and completed, the site location within an existing complex of buildings in a rural area, and the established use and planning history of the site, it is considered that, subject to compliance with the conditions set out below, the development to be retained and completed would be acceptable and would not seriously injure the amenities of the area or of property in the vicinity. The development to be retained and completed would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 7th day of December, 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 and the development shall be retained, carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The landscaping scheme shown on Drg Nos. PD20002 & PD20002A, as submitted to the planning authority on the 7th day of December, 2020, shall be

carried out within the first planting season following the date of this order. 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 similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

Robert Speer
Planning Inspector

4th May, 2021