



An
Bord
Pleanála

Inspector's Report

ABP-309620-21

Development	Construction of cattle shed and walled silage pit with concrete apron
Location	Castletown, Ballylynan, Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	20/293
Applicant(s)	Paul Walshe
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v Grant of Permission
Appellant(s)	Finola Lett
Observer(s)	None
Date of Site Inspection	13.07.2021
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located on a local road approx. 2.5km south of Ballylynan in south east Co. Laois.
- 1.2. The site is occupied by a farmyard positioned adjacent to the local road, in very close proximity to the junction of the local road and the N80 to the south west.
- 1.3. The site has an area of 0.39 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for a straw bed cattle shed, walled silage pit with concrete apron and associated site works.
- 2.2. The floor area of the existing farmyard is approx. 1,930sqm. The proposed cattle shed has a floor area of 217sqm and a maximum height of approx. 5.8 metres. The proposed silage pit has an area of 330sqm. The walls of the silage pit are 2.4 metres high with an additional 1 metre high safety rail. The concrete apron has an area of 88sqm.
- 2.3. Further information was sought by the planning authority. In relation to alleged unauthorised development the applicant stated the agricultural activity is long-established, and the applicant has not been made aware of what alleged unauthorised structures may need planning permission. In relation to the third party observation the applicant stated that the development has been designed in accordance with Department of Agriculture specifications and effluent storage, treatment, and nutrient management is to European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2017.
- 2.4. Clarification of further information was submitted further relating to alleged unauthorised development on site. Enforcement reference UD 20/28 had issued from the planning authority and the applicant had responded to that seeking clarification as to which structures the alleged unauthorised development relates to. Should it be established there are unauthorised structures the applicant would address same through a separate planning application.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted by Laois County Council subject to 12 no. conditions including construction standards and construction practices, external finishes, prevention of pollution, odour, surface water discharge, transportation of organic fertiliser, land spreading of effluent and archaeological monitoring.

3.2. Planning Authority Reports

3.2.1. Three Planning Reports form the basis of the planning authority decision. The planning authority considered, having regard to the provisions of the Laois County Development Plan 2017-2023, that the proposed development would not seriously injure the amenities of the area, would not be prejudicial to public health, would be acceptable in terms of traffic safety and would be in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

Area Office – No objection.

Road Design – No objection.

Environment Section – Proposed conditions provided.

3.3. Prescribed Bodies

Dept. of Culture, Heritage and the Gaeltacht – The proposed development is situated within Recorded Monument LA026-011 (Settlement Shrunken). Groundworks should be archaeologically monitored. A recommended condition is set out.

3.4. Third Party Observations

An observation was received from Finola Lett who lives in the adjacent property to the east. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- Concern about pollution of the observer's domestic well which is 130-150 metres from the proposed development.
- Concern is expressed about the potential for pollution from the proposed development.
- Reference is made to development on site without planning permission.
- Errors and omissions on the Site Layout Plan are set out.
- Photographs are attached to the observation.

4.0 Planning History

- 4.1.1. There does not appear to be any planning history on site.
- 4.1.2. Enforcement file UD 20/28 relates to alleged unauthorised development on site.
- 4.1.3. ABP Reg. Ref. 11.JP0039 – Approval was granted to Laois County Council in 2016 for improvements to the N80 National Road from the townland of Ballynagall to the townland of Castletown traversing the townlands of Maidenhead, Coolanowle and Kilcruise, County Laois; a distance of approx. two kilometres. The improvements include the N80 adjacent to the west of the site and the works have been carried out.

5.0 Policy Context

5.1. Laois County Development Plan 2017-2023

- 5.1.1. Agriculture is referenced in Section 5.10 (Rural Economic Activities).
- 5.1.2. Castletown House, adjacent to the east of the site, is identified as RPS No. 483 (NIAH Reg. Ref. 12802605) in Appendix 1 (Record of Protected Structures) of the Plan.
- 5.1.3. The site is located within the Castletown Archaeological Significance Zone as set out in Section 7.9.3 (Zones of Archaeological Potential) of the Plan.

5.2. Natural Heritage Designations

- 5.2.1. The closest Natura 2000 site is River Barrow and River Nore SAC (Site Code 002162) approx. 5.0km to the south. The closest heritage area is Ballylynan pNHA (Site Code 000857) approx. 3.2km to the north east.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by Finola Lett, Castletown House, Castletown, Ballylynan (the property adjacent to the east). The main points made can be summarised as follows:

- The proposed development is 87 metres from the boundary with Castletown House (RPS No. 483). As it is less than 100 metres the appellant would have been required to give a signed letter of consent. This was not asked for and not given. Granting permission sets a precedent for future development at this address. The appellant is concerned that the planning authority knew this and justified it because it is part of a farmyard. The considerable large structures between the development and farm yard were built without planning permission. The appellant does not wish the Board to address the unauthorised structures, it is just being brought to the Board's attention.
- Excavation works in the field beside the unauthorised structures and up to the appellant's boundary stopped when the planning authority was contacted by the appellant. The planning application was lodged weeks later.
- The applicant's land surrounds Castletown House and any possible development site in relation to the farmyard is less than 100 metres away from Castletown House. The signed letter of consent will always be an issue. The decision to set aside the need for this letter is very significant and should not be allowed to proceed.
- The farmyard is shared with a relative of the applicant, and the relative, and possibly the applicant, own land on the opposite side of the road. This land has

few limitations regarding farmyard expansion and is an option to expand the enterprise.

- Condition 10(a) states 'All soiled water, effluent and waste arising from the existing and proposed developments shall be discharged properly to the proposed/existing effluent storage tanks'. This is currently being breached as effluent from the cattle holding area, not marked on the site plan, is discharging onto the public road. Water from shed gutters also discharge onto the road. This ends up in the River Douglas via a grate at the entrance to Castletown House. There are no storage tanks or waste management facilities to collect this effluent. There are also issues with discharge from a cattle shed and hard core yard into the River Douglas.
- Air pollution from the dungstead and emitted ammonia is affecting the appellant's health. The appellant does not consider these concerns were taken into account with the grant of permission.

6.2. Applicant's Response

The main points made can be summarised as follows:

- Passages from the Planning Report relating to the siting, scale and design of the proposal and the presence of agricultural buildings between the proposed development and Castletown House are set out.
- While the grounds of appeal do not provide any reasoning why a letter of consent would be required, the appellant has perhaps mistaken the requirement for a letter for the limitations of exempted development as per Article 6, Class 6, Part 3 of the Planning & Development Regulations, 2001 (as amended). No letter of consent is required.
- The applicant refutes that the development is in breach of any conditions attached to any grant of permission. It is apparent that it is unpolluted mud, not effluent, from the cattle holding area. The development is in accordance with relevant farm practices and standards. An existing effluent tank has a capacity of 602m³.

- Any 'breach of conditions' should not be a factor in determining the application. Any alleged breach should be made to the Local Authority's Enforcement Section. No discharging was noted by the Case Officer. Photographs included in the applicant's response shows a road to a clean standard and effluent is not discharged as claimed. Gutters on the cattle shed diverts rainwater to an appropriate drainage area. Rainwater is harvested and used within the farm.
- In relation to air pollution, agricultural land in rural areas is designed for agricultural uses. Unfavourable odours are necessary for the purpose of farming. The farm has been in use approx. 45 years and this was known prior to the appellant purchasing the house. Part of Section 5.10 (Rural Economic Activities) and Policy RUR1 of the Laois County Development Plan 2017-2023 are set out. Agricultural use is the preferred and most sustainable land use in rural/unzoned lands.
- The applicant will have due regard to Section 3.5 (Manure Storage) of the 'Code of Good Practice for reducing Ammonia Emissions from Agriculture'.
- The proposed cattle shed would be more conveniently located for the applicant in the north east of the site. However, in considering the appellant's amenity, it is located in the south west of the site, as far from the appellant's dwelling as possible.

6.3. **Planning Authority Response**

None.

6.4. **Observations**

None.

7.0 **Assessment**

The main issues are those raised in the grounds of appeal and the Planning Reports and I am satisfied that no other substantive issues arise. The issue of appropriate

assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Development Location & Design
- Compliance with Laois County Development Plan 2017-2023
- Impact on Adjacent Amenity
- Protected Structure & Recorded Monument
- Appropriate Assessment

7.1. Development Location & Design

- 7.1.1. The positioning of the proposed structures on site and their design are matters for consideration. The site/farmyard is located adjacent to a local road close to the junction with the N80. The existing farmyard structures are visible in the wider landscape. The applicant is also in control of other land at this location as outlined on the 6 inch Site Location Map.
- 7.1.2. The two structures are to be located in the south west area of the farmyard. There were silage bales and other general storage uses in this area on inspection. There are trees and vegetation along the site boundaries at this location. It is adjacent to an existing vehicular access to the farmyard. The N80 has been recently upgraded at this location and the relevant site boundary comprises a stone wall set back from a crash barrier along the N80. Cattle are in the field adjacent to the south east. The location of the development within the farmyard is acceptable in principle.
- 7.1.3. The existing farmyard structures comprise a mixture of older stone buildings and more contemporary agricultural structures, externally finished in dark green corrugated material. The proposed silage pit will have limited visual impact given its nature and scale. The proposed straw bed cattle/weanling shed is 217sqm with a maximum height of approx. 5.8 metres and is to accommodate 45 calves. The elevation drawings imply an external finish similar to existing sheds. It is typical of agricultural structures. It is located within the farmyard envelope, and I consider it to be acceptable.
- 7.1.4. In terms of the location and design of the proposed structures, within an established farmyard, I consider the proposed development to be acceptable.

7.2. Compliance with Laois County Development Plan 2017-2023

- 7.2.1. Assessing an application's compliance with the provisions of the relevant Plan is a matter for consideration.
- 7.2.2. It is stated that 'The Council will seek to facilitate rural economic development opportunities in accordance with policies and objectives' of the Plan. Agriculture is specifically referenced in Section 5.10 (Rural Economic Activities). The Council 'recognises the importance of agriculture for sustaining, enhancing and maintaining a viable rural economy'. Policy RUR1 states that it is the policy of the Council to 'Support the expansion, diversification and intensification of agriculture and the agri-food sector by facilitating appropriate related development subject to environmental and planning considerations'. Therefore, the Plan is generally supportive of agricultural development.
- 7.2.3. Agriculture is referred to in Section 6.2.5.3 (Groundwater Protection). Agricultural activity is a considerable threat to this resource. The planning application is for a cattle shed and a silage pit within an established farmyard. I consider that any concern relating to groundwater protection is a wider issue, not specifically relevant to the provision of two farmyard structures, and is subject of other legislation relating to, for example, land spreading of effluent. The Site Layout Plan states that bedding waste will be accommodated in the existing dungstead. It is stated that the dungstead has the required 16 weeks storage capacity and 'its contents (will) be spread across the landholding as per Department of Agriculture Guidelines during the spreading season'. Silage effluent will discharge to the existing slatted tank. The two proposed structures, in themselves, will not contribute to the pollution of ground or surface waters and their provision is consistent with the wider aim of facilitating agricultural development.
- 7.2.4. Section 8 (General Location and Pattern of Development) contains Development Management Standard 33 (DM33) (Agricultural Development). This outlines what the planning authority will have regard to in considering agricultural development applications. It includes siting and design, waste storage and disposal, and distance from watercourses (this is referenced in Section 7.5).
- 7.2.5. The grounds of appeal consider the existing farmyard does not comply with Condition 10(a) applied by the planning authority which states, inter alia, that all soiled water, effluent, and waste from the existing and proposed developments shall be discharged

properly to the proposed/existing effluent storage tanks. No storage tank is proposed. While I concur with Condition 10(a) in that this discharge should be properly accommodated, I do not consider it reasonable to apply a condition relating to existing development on site, which does not form part of the application, and which is structurally unconnected to the proposed development. The development subject of the application should be assessed on its own merits. Should there be unauthorised development elsewhere on site, or issues with discharge onto the public road, there are other mechanisms to address this. I note that there is a current unauthorised development file relating to the farmyard. I do not consider this application can be used to address issues that are unrelated to the specific development being applied for.

- 7.2.6. Having regard to the foregoing, I consider that the proposed agricultural development is consistent with the established land use on site, and in the general rural area, and would be consistent with Policy RUR1 of the County Development Plan 2017-2023.

7.3. Impact on Adjacent Amenity

- 7.3.1. The grounds of appeal refer to the proximity of the proposed development to the appellant's house and to issues of air pollution affecting the appellant's health.
- 7.3.2. The appellant states that the proposed development is within 100 metres of the boundary with Castletown House and no signed letter of consent was provided by the appellant. As noted in the applicant's response it appears that this letter relates to exempted development. Schedule 2 Part 3 Classes 6 and 8 of the Planning & Development Regulations, 2001 (as amended) relate to, inter alia, a roofed structure for the housing of cattle and the storage of silage. The sixth Condition and Limitation of both classes state that no such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house, other than the house of the person providing the structure, 'save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof'. As a planning application has been made, exempted development provisions do not apply, and therefore there is no requirement for any letter of consent from any third party.
- 7.3.3. Section 5.10 of the County Development Plan 2017-2023 acknowledges that, 'Unlike in urban areas where industrial uses that generate noise and odour can be clearly separated from emission-sensitive residential uses through zoning, this robust system

of separating uses does not happen in the same way in rural areas and conflicting uses can occur in close proximity'. This is an issue in the grounds of appeal. The Planning Reports note the creation of an enforcement file on the farmyard. This relates to some alleged unauthorised structures. The further information request noted that 'some of the sheds are in situ since pre-1964'. Therefore, the established use of the site as a farmyard does not appear to be in question.

- 7.3.4. The source of the air pollution cited in the grounds of appeal is from an existing dungstead located immediately adjacent to the appellant's boundary. The proposed structures are located further away from the adjacent property than the existing farmyard structures. However, bedding waste from the cattle shed is to be accommodated in this dungstead. Notwithstanding, this is an established farmyard and the use of a dungstead is a standard part of farmyard operation.
- 7.3.5. I consider that the proposed development is a reasonable extension and intensification of an established farmyard and the agricultural use proposed is reasonable in a rural environment. The proposed structures are located at the edge of the farmyard further away from the common boundary with the appellant's boundary. While there may be additional nuisance to third parties, such as odour from the dungstead, it is unavoidable in a farmyard environment.

7.4. Protected Structure & Recorded Monument

- 7.4.1. The proposed development is located in close proximity to a protected structure (Castletown House, RPS No. 483) and is within the Castletown Archaeological Significance Zone as set out in Map 1.7.2 of the County Development Plan 2017-2023.
- 7.4.2. Castletown House is located east of the farmyard. The proposed structures are located in the south west area of the farmyard. This is the furthest position on site from the protected structure. There are existing farmyard structures between the proposed development area and the protected structure. A number of the existing structures, such as the combined straw/hay and cattle shed and slatted shed (Structure Nos. 9 and 10) are relatively substantial structures, notwithstanding the alleged unauthorised nature of some of these. I also note that there is a significant number of substantial mature trees around the boundaries of Castletown House such that the House itself is not visible from the site, the local road or the N80. I am satisfied that the proposed

development would have no adverse impact on the setting or character of Castletown House.

- 7.4.3. The Site Layout Plan identifies a motte (Reg No. LA026-011001) within the curtilage of Castletown House immediately north east of the site. This is partially visible from the local road. A report was received on foot of the application from the Department of Culture, Heritage and the Gaeltacht. This noted the development location 'within the constraint for Recorded Monument LA026-011 --- Settlement Shrunken ...' The Department recommended that all groundworks associated with the development should be archaeologically monitored in any grant of permission and recommended a condition. This condition was attached in the planning authority's decision. I consider that a similar condition is appropriate in the event of a grant of permission. The applicant has expressed no issue with this condition.
- 7.4.4. Having regard to the foregoing, I consider that the proposed development would have no impact on the setting or character of the protected structure and would be acceptable subject to an archaeological monitoring condition.

7.5. Appropriate Assessment

- 7.5.1. The application is for a straw bed cattle shed and a walled silage pit with a concrete apron within an existing farmyard. Effluent from the silage pit and apron is to discharge to an existing slatted tank. Bedding waste from the cattle shed is to be accommodated in the dungstead which has the required 16 week storage capacity and will be land spread in accordance with Department of Agriculture Guidelines. Land spreading is subject of regulatory control. The Ordnance Survey shows no watercourse within or along the boundaries of the site. The nearest watercourse identified is the River Douglas approx. 250 metres away at its closest point to the north east of the development area on the opposite side of the local road. The River Douglas is a tributary of the River Barrow, (River Barrow and River Nore SAC (Site Code 002162)).
- 7.5.2. Having regard to the nature and scale of the agricultural development subject of the planning application and to the nature of the receiving environment, remote from and with no hydrological or ecological pathway to any European site, no appropriate assessment issues arise and it is not considered that the proposed development would

be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Laois County Development Plan 2017-2023, and to the nature and scale of the development within an established farmyard it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of the rural environment of the site and would not seriously injure the residential amenities of properties in the vicinity and would not have any adverse impact on the nearby protected structure or the recorded monument. The proposed development 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 submitted on the 21st day of October 2020 and 28th day of January 2021, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. All foul effluent, slurry and soiled water generated by the proposed development shall be conveyed through properly constructed channels to the proposed

storage facilities and no effluent, slurry or soiled water shall discharge or be allowed to discharge to any drain, stream, river, or watercourse, or to the public road.

Reason: In the interest of public health.

3. All uncontaminated roof water from buildings shall be separately collected and discharged in a sealed system to existing drains, streams or adequate soakpits and shall not discharge or be allowed to discharge to the foul effluent drains, foul effluent, and slurry storage tanks or to the public road.

Reason: In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.

4. Slurry generated by the development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate, and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended.

Reason: To ensure the satisfactory disposal of waste material, in the interest of amenity, public health and to prevent pollution of watercourses.

5. All oxidisable and galvanised surfaces of the proposed structure shall be painted a dark green matt colour, unless otherwise agreed in writing with the planning authority prior to commencement of development, and the surfaced shall be maintained in a painted condition at all times.

Reason: In the interests of visual amenity and orderly development.

6. (a) The developer shall engage the services of a suitably qualified archaeologist to monitor all topsoil stripping associated with the development.

(b) Should archaeological material be found during the course of monitoring, the archaeologist may have work on the site stopped pending a decision as to how best to deal with the archaeology. The developer shall be prepared to be advised by the Department of Culture, Heritage and the Gaeltacht with regard to any necessary mitigating action e.g. preservation in situ and/or excavation. The archaeologist shall be facilitated in recording any material found.

(c) The Department of Culture, Heritage and the Gaeltacht shall be furnished with a report describing the results of the monitoring.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

Anthony Kelly

Planning Inspector

15.07.2021