



An
Bord
Pleanála

Inspector's Report

ABP-309779-21

Development	Retention of agricultural buildings
Location	Creaghmore, Clonakilty, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	2014
Applicant(s)	Denis McCarthy
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Denis McCarthy.
Observer(s)	Anders Ingelstein. Michel & Anne Coyne Lee & Lisa Coyne Martin & Mary O Driscoll
Date of Site Inspection	18 th May 2021.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. The appeal site is located within the townland of Creaghmore a rural predominantly agricultural area circa 3km to the southwest of Clonakilty in West Cork. The appeal site is accessed by way of a cul de sac local roadway serving three dwellings and agricultural lands. The appeal site has a stated area of .703hectares and forms part of a local holding of 11hectares. Application details indicate that this holding is farmed in conjunction with an overall family partnership landholding of 109 hectares all within a 4km radius of the appeal site.
- 1.2. The appeal site is within an attractive undulating landscape and forms part of a larger field pattern. The south-eastern site boundary is defined by a mature treeline. Levels rise generally to the southwest with a high point of 45.78 adjacent to the southwestern boundary relative to a spot level of 32.89 adjacent to the entrance. The site is occupied by a well-established farm building adjacent to the southern boundary with a shed of recent construction (proposed to be retained) located towards the western boundary. A livestock holding pen and slatted tank is located on the northern side of the new shed. An entrance and access driveway also subject of the retention has been provided from the roadway to the northeast. A gravel yard fronts the building for retention. On the adjoining site to the south is the appellant's dwelling and outbuildings. The dwelling has been recently renovated and extended. There are a number of recorded monuments in the vicinity including a ringfort (CO16600) circa 200m to the northwest of the site and a fulacht fia (CO16601) circa 200m to the south of the site.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of agricultural building 564sq.m for the storage of farm machinery, dry goods pressure washer along with ancillary workshop area which varies from that granted under 14/486. Livestock holding pen, livestock crush and slatted tank. Vehicular entrance and access to farmyard.
- 2.2. During the course of the application to the Council and specifically in response to a request for additional information the applicant indicated that the use of the shed is

for machinery storage in conjunction with the family farm partnership and agricultural contracting business.

3.0 Planning Authority Decision

3.1. Decision

By order dated 26th February 2021 Cork County Council decided to refuse permission for the following reason:

Having regard to the location and scale of the development for retention, the Planning Authority is not satisfied that the development, and proposed use as a storage facility for an agricultural contracting business would not seriously injure the amenities of the adjacent property, having regard to its proximity to adjacent dwellinghouse, its large scale and the likely generation of nuisance and noise. through significant increase in traffic generation associated with agricultural contracting. The proposed development would, therefore, seriously injure the residential amenities and depreciate the value of the property in the vicinity, and accordingly, would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report notes that the nature of the use is expected within a rural area however given the concerns expressed by the Environment Section regarding negative impact on adjacent residential amenity the nature of the operation and a justification for the current location required. Screening report screens out need for Appropriate Assessment.

A request for additional information issued seeking information of the precise details of agricultural contracting business being operated. Details of all tractors and machinery being stored and a justification for quantity of farm machinery at this location rather than another location on the farmholding at Inchydoney.

Second report considers that the commercial nature of the farming activity is not consistent with the nature of the area. Refusal recommended.

Senior Executive Planner's report concurs with recommendation to refuse.

3.2.2. Other Technical Reports

Area Engineer's report considers the proposal to be acceptable as part of an agricultural farming operation. No evidence of road damage. Sightlines are adequate. No objection subject to conditions.

Environment report considers that the nature of the proposed agricultural contracting business is likely to result in significant movement of heavy agricultural traffic to and from the farmyard via the access laneway. Traffic movements associated with such facilities are likely to run from early morning to late at night during harvest season. Proximity of the third-party dwelling on the laneway to the farmyard is likely to result in excessive noise nuisance. Such developments should be located away from housing or in a commercial area served by surfaced roads and removed from residential properties. Proposal is likely to give rise to significant noise and dust nuisance to residents which share the laneway. Refusal recommended.

3.3. **Prescribed Bodies**

No submissions

3.4. **Third Party Observations**

Submission from the following neighbouring residents:

- Michael and Anne Coyne, Gortnagearagh
- Martin and Mary O Driscoll, Creaghmore
- Anders Ingelsten, Curlew Cottage, Kilkerranmore
- Lee and Lisa Coyne, Blue Anchor Cottage Gortnagearagh

Submissions object to the development and raise common issues of concern which I have summarised as follows:

- Non-adherence to original permission. Substantial risk of future non-compliance.
- Use for storage and repair of machinery is inappropriate in the greenbelt.
- Traffic, noise nuisance and disturbance.
- Negative impact on residential and rural amenity and quality of life.
- Potential for impact on national Monuments - Ringfort and Fulacht Fia.
- Traffic hazard Single track lanes unsuitable for heavy machinery. Access inadequate.
- Environmental Impact Assessment is required and further consultation.

4.0 **Planning History**

17/288 Application for Permission for: (a) retention of a machinery storage shed including washer house (constructed in lieu of cattle house/storage building granted under PI Reg No. 14/486 and for permission for change of use of part of same to cattle house including installation of a slatted slurry tank, (b) retention of alterations to holding yard as granted under PI Reg. No. 14/486 including slatted slurry tank and fencing, (c) retention of vehicular entrance, access road and hard surfaced area, (d) construction of a new machinery storage shed and associated site works. Application withdrawn prior to determination by the Board.

14/486 Permission granted for construction of a cattle house with hay and straw storage area, two no slatted slurry tank, cattle holding yard, and two no concrete aprons and carry out associated site works.

5.0 Policy Context

5.1. Development Plan

The Cork County Development Plan 2014 and West Cork Municipal District Local Area Plan 2017 refer. The site is located within the Clonakilty Green Belt as designated in the Local Area Plan. Within the Greenbelt the Local Area Plan will generally reserve land for agriculture, open space or recreation uses.

County Development Plan Objective EE8-1 Agriculture and Farm Diversification Encourage the development of a dynamic and innovative, sustainable agricultural and food production sector by:

- Encouraging the development of sustainable agricultural and infrastructure including farming buildings;
- Prioritising the development of sustainable rural housing to support working farmers and their employees.
- Encouraging farm diversification through the development of other sustainable business initiatives appropriate to the rural area; and
- Supporting appropriate proposals for sustainable tourism development.

5.2. Natural Heritage Designations

The site is not within a designated area. Nearby sites include

Clonakilty Bay SPA Site Code 004081 within 2km

Clonakilty Bay SAC Site Code 000091 within 2km

Galley Head to Duneen Point SPA Site Code 004190 within 4km

Kilkeran Lake Castlefreke Dunes SAC Site Code 001061 within 4.5km

Bandon River SAC (Site Code 002171) within 15km

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is submitted by McCutcheon Halley Certified Planning Consultants on behalf of the first party. The grounds of appeal are summarised as follows:

- The Council has incorrectly classified the use of the shed as commercial use. Use of the building and associated machinery is for agricultural purposes only.
- Traffic generated is typical of rural area, serves farms which are all local and reduces the need for contractors to travel from outside the catchment to serve local farms.
- There are no significant /material changes to the building that had planning permission under 14/486.
- The Planning Authority's assessment did not have proper regard to the planning policy and objectives supporting agricultural development.
- Farm Partnership is a critical consideration in this case.
- In 2014 when permission was granted (under planning reference 14/486) the intended use was to house cattle and fodder along with the provision of 2 slatted slurry tanks, cattle holding yard and 2 concrete aprons.
- With the subsequent loss of sheds as storage facilities on the termination of a lease of Convent Farm the machinery sheds at Inchdoney had to be converted to house cattle as it was better equipped for livestock. Creaghmore became more convenient and secure for machinery storage.
- Multi use of farm buildings is standard practice for farm partnerships. Consolidated and partnership approach to farming is a typical arrangement for many farms in Ireland.
- Cork County Council have taken a narrow view of the acceptable uses that are permissible within agricultural buildings and have mistakenly considered the use of the building permitted as being permitted as being a commercial use as part of a commercial contracting business
- Use is for agricultural use primarily for the applicant's own use

- The relatively modest amount of machinery together with the fact that it is primarily for the applicant's own use as part of the farm partnership within 4km means that the level of traffic arising is not excessive.
- Area Engineer concluded that there has been no damage linked to the access road or other roads in the vicinity that could be attributed to the applicant's farming.
- Change from use for livestock to use to machinery does not justify the Council's decision to depart from previous permission
- Planner's report does not address agricultural policy and refers to the expired local area plan rather than the current 2017 Local Area Plan.
- The 2014 County Development Plan includes a number of supportive policies and objectives which strongly support the protection and development of agricultural development uses in rural areas including Objective EE8-1, Objective RCI 5-8.

6.2. Planning Authority Response

The Planning Authority did not respond to the appeal.

6.3. Observations

6.3.1 A number of third-party observer submissions from local residents raise particular and common issues in objection to the proposed development. Submission from Anders Ingelsten, Curlew Cottage, Kilkerranmore, Clonakilty accompanied by a number of enclosures to elucidate the arguments made.

- Application is an agricultural contracting business not only a family farm.
- Increased movement of heavy machinery will have negative impact on wildlife. Environmental studies appended demonstrate potential for disturbance.
- Traffic Safety issues on unsuitable road infrastructure.
- Sightlines are limited due to elevation and domestic dwelling at junction,

- Noise and nuisance will not be limited to normal business hours and will negatively impact on amenity of dwellings in the area.
- Heavy machinery associated with agricultural contracting business should be located away from housing or in a commercial area that is served by appropriate road infrastructure.
- Supporting documentation outlines the nature of the contracting business.

6.3.2 Michael and Anne Coyne, Gortnagearagh, Clonakilty.

- Reiterate concerns regarding significant heavy traffic on the local road. Photographs appended demonstrate damage to the local road from heavy machinery.

6.3.3 Lee and Lisa Coyne, Blue Anchor Cottage, Gortnagearagh.

- Level of farm machinery goes beyond the day to day and seasonal workload as demonstrated in attached Farmer's Journal Article.

6.3.4 Submission from Joe Bonner, Town Planning Consultant on behalf of Martin and Mary O Driscoll, Creaghmore, Clonakilty. Includes a number of appendices and photographs to support the case made.

- Notably the level of machinery on the site has been reduced during the course of the appeal.
- If permission is granted any restriction on use is impossible to enforce. Permission could not regulate the use between agricultural and commercial.
- The 27.23 acres at Creagh More represents only 8.93% of the overall lands in the McCarthy family ownership and the justification provided for having all the machinery located at Creaghmore is insufficient to warrant a grant of permission.
- Agriculture does not include the storage of a wide range of machinery that is hired out for payment to tend to third party lands and the shed is facilitating a

commercial business not associated with the applicant's own landholding which is only 1.79ha in area while a small are of adjacent land is owned by the limited company of which the applicant's parents are directors.

- Information provided in relation to S&D McCarthy Limited indicates 4 employees in the most recent annual accounts available
- Anything but a refusal will facilitate the uncontrollable expansion of the business and generate further negative impact on the neighbours.
- 2016 article in the Farmer's Journal demonstrates nature of the agricultural contracting business.
- Local road had to be repaired over a 2-month period in late March to June 2018 as demonstrated in appended photographs.
- Material changes made to the structure during the time of construction suggests that the shed was never designed to accommodate cattle.
- Machinery washing area in the shed results in surface water flowing downhill to watercourse which is 40m down from the shed along the road at the entrance to the O Driscoll property not 174m from the shed as stated in the application.
- Drain is silt laden. Concerns also with regard to oil and grease. Water runoff has also caused a small sink hole in the O Driscoll property.

7.0 Assessment

7.1 I consider that the appeal can be addressed under the following broad headings.

- Principle of Development
- Traffic
- Impact on Residential and Rural Amenity
- Appropriate Assessment

7.2 Principle of Development

7.2.1 On the issue of the principle of development and the nature of the use I note that the decision of the council referred to use as a storage facility for an agricultural contracting business. The first party appeal contends that the Council has incorrectly classified the proposed use as commercial rather than an agricultural use. It is stressed that farm partnership and a consolidated approach to agriculture is now a typical arrangement for many farms in Ireland and I agree that this is indeed the case. The list of agricultural machinery to be stored within the building for retention as specified within the grounds of appeal and in the further information response is typical of a farm holding of the nature and scale (300acres) as outlined. I note that on the date of my site visit the level of machinery observed on the site was consistent with the details submitted. The Council granted permission under planning reference 14/00486 for construction of a cattle house with hay and straw storage area, two no slatted slurry tanks, cattle holding yard concrete aprons and associated site works. The application and appeal grounds outline that due to a change in circumstances the use for cattle housing was never developed and the shed was identified as the appropriate location for consolidated farm machinery storage. I consider that a degree of flexibility and provision for multiple uses within the farm context would be appropriate and is in accordance with proper planning and sustainable development. I consider that the nature of the operation as outlined within the application and appeal documentation is an agricultural use and is appropriate within this greenbelt area. On this basis I consider that the principle of development is acceptable.

7.2.2 As regards third party observer submissions with regard to the applicant's past failure to comply with the permission as granted and allegations of future non-compliance, or future intensification/ material change of use, I consider that the latter issue is purely conjecture and any non-compliance can be appropriately dealt with by way of enforcement which is a matter for the local authority. As regards the retrospective nature of the application the planning system provides for such applications and therefore it is appropriate that the development as outlined within the documentation is assessed on its planning merit.

7.3 Traffic

7.3.1 On the issue of traffic, I note that the report of the Area Engineer which sets out that the roadway serving the site L-4007-1 was upgraded by a Local Improvement Scheme grant in the early 2000s and taken in charge by the Council. As the roadway serves three dwellings and agricultural lands the level of traffic would be low. In relation to alleged traffic damage raised within the third-party submission the Area Engineer indicates satisfaction that “there has been no damage linked to the access road or the roads in the vicinity that could be attributed to this operation and any maintenance of the road network would be appropriate and in comparison, to other roads in the overall network”. I am satisfied that based on the details submitted the development as outlined will not give rise to traffic hazard, represents a normal level of traffic arising in relation to agricultural development within a rural setting and therefore refusal on the grounds of traffic is unwarranted. As regards the new entrance, sightlines are adequate and within the control of the applicant.

7.4 Impact on Residential and Rural Amenity.

7.4.1 On the issue of impact on residential and rural amenity I note that the third-party observers cite negative impact arising from traffic, noise nuisance and other disturbance. I consider that given the limited amount of machinery to be stored within the building on the site the level of disturbance arising is not likely to be significant and is not out of character in a rural agricultural area. I consider that negative impacts on residential amenity are minor and largely mitigated by standard good practice.

7.4.2 As regards visual impact of the shed whilst elevated over road level it is well screened by established landscaping is linked to the established farmyard cluster and green colour cladding ensures assimilation into its setting. The shed is not in my view unduly prominent in the landscape and is acceptable in this context in terms of its visual impact.

7.4.3 On the issue of surface water run-off from the site, I note that the Area Engineer recommended a condition requiring the installation and maintenance of a drainage grating at the site entrance the drain at the site entrance to prevent flooding of the public road. I consider that bunding of diesel tank as appropriate to prevent pollution.

7.5 Appropriate Assessment Screening.

7.5.1 The site is not within a designated area. The site is circa 2km from the Clonakilty Bay SPA and Clonakilty Bay SAC separated by agricultural lands, infrastructure and other developments. Having regard to the nature, scale, and location of the development proposed for retention, the nature of the receiving environment, and the separation distance to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site

8.0 Recommendation

9.0 I have read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising. I recommend that planning permission to retain the development be granted subject to the following conditions.

10.0 Reasons and Considerations

Having regard to the nature and extent of the development to be retained and to the history of on-site agricultural activity and details of agricultural farm partnership of which the appeal landholding forms part, to the existing character and pattern of development in the vicinity, if is considered that, subject to compliance with the conditions set out below, the proposed development to be retained would not seriously injure the amenities of the area or of property in the vicinity, would not give rise to a traffic hazard and would therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The machinery shed proposed for retention shall be used for agricultural purposes in accordance with the submitted details.

Reason: To protect the amenities of property in the vicinity.

3. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard –

A drainage grating, along with a discharge pipe to the surface water drainage located within the site, shall be installed at the entrance to the site to the satisfaction of the Planning Authority. This shall be maintained at regular intervals as necessary to ensure it is working condition.

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

4. All overground tanks containing liquids (other than water) shall be contained in a waterproof bunded area which shall be of sufficient volume to hold 110 per cent of the volume of the tanks within the bund. All water contaminated with hydrocarbons, including stormwater, shall be discharged via a grit trap and three-way oil interceptor with sump to a watercourse. The sump shall be provided with an inspection chamber and shall be installed and operated in accordance with the written requirements of the planning authority.

Reason: In order to protect groundwater.

5. All trees [and hedgerows] within and on the boundaries of the site shall be retained and maintained, with the exception of the following:
- (a) Specific trees, the removal of which is authorised in writing by the planning authority to facilitate the development.
 - (b) Trees which are agreed in writing by the planning authority to be dead, dying or dangerous through disease or storm damage, following submission of a qualified tree surgeon's report, and which shall be replaced with agreed specimens.

Retained trees [and hedgerows] shall be protected from damage during construction works. Within a period of [six] months following the substantial completion [occupation] of the proposed development, any planting which is damaged or dies shall be replaced with others of similar size and species, together with replacement planting required under paragraph (b) of this condition.

Reason: In the interest of visual amenity.

6. All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the storage facilities and no effluent or slurry shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

Reason: In the interest of public health.

Bríd Maxwell
Planning Inspector

15th June 2021