



An  
Bord  
Pleanála

## Inspector's Report ABP-309866-21

<b>Development</b>	Permission for the construction of a slatted unit for the housing of cattle and all associated site works.
<b>Location</b>	Modeshill (Ayre). Mullinahone, Co Tipperary.
<b>Planning Authority</b>	Tipperary County Council.
<b>Planning Authority Reg. Ref.</b>	21/88
<b>Applicant(s)</b>	Michael Neary
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission subject to conditions.
<b>Type of Appeal</b>	Third Party v Decision
<b>Appellant(s)</b>	Anna M. Turner
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22nd May 2021.
<b>Inspector</b>	Fergal Ó Bric

## **1.0 Site Location and Description**

- 1.1. The appeal site has a stated area of 0.556 hectares and comprises an agricultural field, which forms part of a larger agricultural holding, comprising a total of 31 hectares. The appeal site is located within a rural area approximately 5 kilometres north-east of the village of Mullinahone and approximately 6 kilometres west of the N76, at Callan. The appeal site is located on the northern side of a local county road, the L-2401 which has a carriageway width of approximately four metres. To the east, west and north of the appeal site are other agricultural lands and the south is the local county road from which the site is accessed via an agricultural field gate. On the opposite side of the county road is a dwelling and farmyard complex which comprises a number of farm buildings.
- 1.2. There are a number of individual dwellings located further east, west, south, and south-east of the appeal site.

## **2.0 Proposed Development**

Planning permission is sought for the construction of a slatted unit for the housing of cattle and all associated site works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated 10<sup>th</sup> March 2021 Tipperary County Council granted planning permission subject to five conditions. The following is a summary of the pertinent conditions:

Condition number 2: Management of contaminated and uncontaminated surface water run-off.

Condition number 4: Reuse and recycle of rubble and demolition waste. Management of noise and dust during construction and demolition works.

Condition 5: Development Contributions

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

The planners report noted that the appeal site comprises an agricultural field in pasture, part of a larger land holding and would comply with Policy ED7 of the Development Plan. The Planner carried out an Environmental Impact Assessment (EIA) screening exercise and concluded that the development would not be of a class provided for under Parts (1) or (2), Schedule 5 of the Planning and Development Regulations, 2001, as amended and therefore that the submission of an EIAR would not be required in this instance. An Appropriate Assessment (AA) screening exercise concluded that AA was not required in this instance. A grant of planning permission was recommended subject to conditions, summarised in Section 3.1 above.

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

One observation was received from a third party. The observation raised issues which are similar those raised within the third-party appeal received by the Board.

## **4.0 Planning History**

I am not aware of any planning history pertaining to the appeal site or land holding.

## **5.0 Policy Context**

### **5.1. Local and National Policy**

### **5.2. Development Plan**

The South Tipperary County Development Plan 2009 (as varied) refers.

Relevant policy includes:

- Policy ED 7: Protecting Agricultural Practices.
  - (a) To protect farms and high-quality agricultural land from proposals for development where such would result in negative impacts upon their viability.

### **5.3. EUROPEAN COMMUNITIES (GOOD AGRICULTURAL PRACTICE FOR PROTECTION OF WATER) REGULATIONS 2014**

5.3.1 The Regulations provide statutory support for good agricultural practice to protect waters against pollution. The Regulations place certain obligations on occupiers of agricultural holdings in relation to farmyard management, collection, and storage of manures, slurry, soiled water etc, nutrient management and prevention of water pollution. They also set out minimum requirements for storage, set limits on the land application of fertilisers and establish periods when land application of fertiliser (Organic and chemical) is prohibited.

5.3.2 Under the Regulations, the country is divided into four areas with varying storage period requirements for livestock manure (Schedule 3). Prohibited spreading periods are set out in Schedule 4. The appeal site is within an area, which specifies a minimum storage period of 16 weeks. The land application of waste is prohibited between the period from October 15th to January 31st for organic fertiliser (other than farmyard manure) and from November 1st to January 31st for farmyard manure.

### **5.4. Natural Heritage Designations**

None relevant.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

6.1.1 The appeal is submitted by Peter Thomson, Planning Consultant, on behalf of Anna M. Turner, an adjoining landowner. The grounds of appeal are summarised as follows:

- The only practical location for a replacement house would be on the site of the former farmhouse on the northern side of the L-2401.
- There is no other road frontage available to the appellant on the northern side of the county road except for a field entrance. Roadside boundaries would need to be removed to achieve the requisite sightlines on the southern side of the L2401.

- The proximity of the slatted shed and its agricultural use to the only part of the appellants estate where a house could reasonably be located would adversely impact upon their amenity and therefore, would devalue the property.
- The proposed shed would intrude significantly upon the skyline, by virtue of its height and proximity to the public road with a relatively low roadside boundary and the low-lying nature.
- No consideration was given to the traffic impact of the proposal. No sightlines are indicated within the planning documentation and sightlines are restricted, particularly in a westerly direction and the applicant has no control over lands to improve sight distances.
- A significant increase in traffic will arise with agricultural traffic entering and exiting the site.
- The agricultural entrance to the appeal site is immediately adjacent to the entrance to the appellant's former dwelling.
- No planning conditions were included within the Planning Authority's decision regarding management of pollution within the appeal site.
- The applicant could develop a slatted shed at alternative locations within his land holding, which have not been duly considered and the alternatives would not result in interference with the appellant's property.

## **6.2 Planning Authority Response**

None received.

## **6.3 First Party Response to third party appeal submission**

The submission made by the applicant Michael Neary addresses the grounds of appeal as follows:

- The site of the former dwelling is too small to accommodate a dwelling and wastewater treatment plant with percolation area as per the EPA requirements. The minimum site area generally required is 0.5 acres. The site of the former house has an area of 0.15 acres.

- The slatted shed complies with the planning regulations.
- The agricultural access to the appeal site is in existence and is currently used to serve the lands and farm holding.
- Planning conditions regarding pollution is a matter for the decision makers.
- Pictures of the existing derelict farmhouse which has no services are included.

## **7.0 Assessment**

7.1. I consider the key issues raised within the appeal submission are as follows:

- Principle of Development
- Residential Amenity.
- Traffic and Access
- Other Issues
- Appropriate Assessment.

### **7.2. Principle of Development**

7.2.1. The appeal site is located on unzoned lands in a rural area, as defined within the South Tipperary County Development Plan 2009 (as varied). The appeal site forms part of a larger landholding, 11 hectares at Modeshill to the east and north-west of the appeal site (as per land holding map submitted as part of the planning documentation) and an additional 20 hectares approximately 4 kilometres northwest of the appeal site. The applicant has stated that the development is essential for compliance with animal welfare requirements and the Department of Agricultural, Fisheries and the Marine Guidelines.

7.2.2. The proposed development would provide for the rationalisation of an existing beef enterprise and streamlining of an established agricultural use. I consider that the consolidation of the established agricultural use on the site is an appropriate use in this rural area where the predominant land use is agricultural and therefore, the principle of development is acceptable at this location

### **7.3. Residential Amenity**

- 7.3.1. The appellant sets out that the proposed development would adversely impact upon her property by reason of increased farm activity, surface water run-off and effluent that would be generated on the appeal site.
- 7.3.2. The existing access to the farmlands is located immediately east of the appellants property. However, the slatted shed would be located on the opposite side of the field from the appellants property. All that remains on the appellants property are the ruins of a house, however, the roof has fallen in, much of the rising walls have disintegrated and the property is overgrown.
- 7.3.3. In terms of any pollution or run off from the development, the manure would be managed within the underground slatted tank system and in terms of surface water and soiled water run-off, both would be managed on site as the applicant is required to demonstrate compliance with surface water management guidelines set out by the Department of Agriculture, Fisheries, and the Marine. I consider that the issue of surface water management is something that can be addressed by means of an appropriate planning condition.
- 7.3.4. The applicant is proposing to construct an underground slurry storage facility beneath the proposed cattle shed with a stated slurry storage capacity of 306 cubic metres. In terms of slurry emanating from the development and run -off, the development would be required to adhere to current animal welfare and Department of Agriculture, Fisheries, and the Marine Guidelines, and these would ensure that any run-off from the development would be managed on site within the slatted unit and would therefore, not result in contamination of neighbouring bored wells or properties. As regards impact on the adjacent residential dwellings in terms of odour and noise, I find no evidence to support the assertion that significant impacts on established amenity would arise as a result of the development.
- 7.3.5. In conclusion, I am satisfied that the amenities enjoyed by the neighbouring landowners would not be adversely impacted upon by the proposed development and that the satisfactory management of surface water and effluent would be of benefit to their amenity.

### **7.4. Design and Layout**

- 7.4.1. The proposed development would be located within the north-eastern segment of the field, at the furthest point from the appellants property. Therefore, I am satisfied, from a practical perspective, that the location of the slatted shed is appropriate, given that there is sufficient space to construct the proposed development and the proposals would also be removed from the appellants property at this location.
- 7.4.2. As regards the visual impact of the development, the site levels are consistent with those of the adjoining lands and the public road. The site is located within a rural area where agricultural structures are mostly accommodated. Notwithstanding the substantial scale of the agricultural structure, it would not be unduly prominent in this locality. The requirement for good agricultural practices will in my view appropriately mitigate any impact on amenities beyond the site boundaries. The proposed farm building would have a maximum ridge height of 9.9 metres, consistent with that of the farm buildings within the farm complex of the opposite side of the local county road and is considered acceptable as this height allows for access for high loader farm machinery. There is mature landscaping along the eastern and northern site boundaries' which would assist in assimilating the structure within the local landscape. Further landscaping could be conditioned along the southern (roadside) boundary.
- 7.4.3. The proposed development would provide for covered concrete areas and slated areas for livestock housing, associated effluent collection tanks and ancillary works. I consider that the proposal provides for the improvement of agricultural practices and provides for significant environmental improvement and is therefore, reasonable. I conclude that, subject to good agricultural practice in accordance with the European Union (Good Agricultural Practices for the protection of Waters) Regulations 2014 and compliance with standard environmental conditions, the proposed development would not result in water or other environmental pollution and would be in accordance with the proper planning and sustainable development of the area.

## **7.5. Traffic and Access**

- 7.5.1. The applicant is proposing to utilise the existing farm gated access to the lands to access the proposed slatted cattle unit.. No sightlines have been illustrated within the planning documentation. However, with the trimming back of the roadside boundary



in proximity to the agricultural entrance, sightlines in excess of 200 metres would be achievable in an easterly direction and approximately 80 metres in a westerly direction. Access is onto a local county road where traffic levels were noted as being low on the date of my site inspection. I am satisfied that adequate sight distances are achievable from the entrance point. However, improved sightlines would be achieved if the entrance were to be moved to the south-eastern side of the road frontage and the Board could condition this matter, if deemed necessary. I am satisfied that the proposal would not result in the creation of a traffic hazard or adversely impact upon the safety or free flow of traffic on the adjoining county road

## **7.6. Other Issues**

- 7.6.1. The issue of devaluation of property was raised within the appeal submission. the appellant has submitted no evidence to support that her property would be devalued by the proposed development. In the absence of any substantive evidence to the contrary presented in this case, I do not consider that this ground of appeal should be upheld.

## **7.7. Appropriate Assessment**

Having regard to the nature and scale of the proposed agricultural development and the absence of a pathway connecting the appeal site to a Natura 2000 site, it is considered that 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**

- 8.1. I recommend that planning permission be granted.

## **9.0 Reasons and Considerations**

- 9.1. Having regard to the rural location of the site; the lack of farm buildings to house animals on this land holding; the existing established farm practices on the holding; the character and pattern of development in the vicinity; and to the policies and

objectives of the South Tipperary County Development Plan 2009 (as varied), it is considered, subject to the conditions set out below, that the proposed development would not seriously injure the amenities of the area. 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 to the Planning Authority on the 28th day of January 2021 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 slatted shed shall be used only in strict accordance with a management schedule to be submitted to and agreed in writing with the planning authority, prior to commencement of development. The management schedule shall be in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014 (SI No 31 of 2014), and shall provide at least for the following:

- (1) Details of the number and types of animals to be housed.
- (2) The arrangements for the collection, storage, and disposal of slurry.
- (3) Arrangements for the cleansing of the buildings and structures.

**Reason:** In order to avoid pollution and to protect residential amenity.

3. All foul effluent and slurry generated by the proposed development shall be conveyed through properly constructed channels to the proposed and existing 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.

4. 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) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and
  - (b) all soiled waters, shall be directed to the slatted storage tank.  
Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

**Reason:** In the interest of environmental protection, public health and to ensure a proper standard of development.

- 5 (a) The entrance shall be as per the Site Layout lodged with the application to the Planning Authority on the 28<sup>th</sup> day of January 2021. The roadside boundary shall be maintained in a neat and tidy manner and below a height of 1.1 metres so that sightlines shall not be obstructed.
  - (b) The agricultural roadway from the agricultural entrance to the slatted shed shall be suitably hard cored and be maintained in a clean and tidy manner all year round. The adjoining public road shall be maintained in a clean and tidy fashion such that no muck, dirt, or surface water from the agricultural operations shall be deposited on same.

**Reason:** In the interest of traffic safety.

- 6 The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:
  - (a) A plan to scale of not less than [1:500] showing –
    - (i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain

ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech, or alder] [which shall not include prunus species]

(ii) Details of screen planting which shall not include cupressocyparis or leylandii

(iii) Details of roadside planting which shall not include prunus species.

(b) A timescale for implementation [including details of phasing]

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 [or until the development is taken in charge by the local authority, whichever is the sooner], 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 residential and visual amenity.

7 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development

Contribution Scheme made under section 48 of the Act be applied to the permission.

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Fergal Ó Bric  
Planning Inspectorate

5th July 2021