



An
Bord
Pleanála

Inspector's Report 309876-21

Development	Retain existing agricultural structure and pen for housing of horses and all ancillary site developments.
Location	Kilquire Upper, Kilmaine, Co. Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	20/836
Applicant(s)	James Sheridan
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party vs. Grant
Appellant(s)	Ann Sheridan & Fred Cleary
Observer(s)	None
Prescribed Bodies	None
Date of Site Inspection	23 rd August 2021
Inspector	Stephen Ward

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.049 ha and is located in the rural area of Kilquire Upper, approximately 2km north of the village of Kilmaine. The site is accessed off a narrow road that serves a number of houses and agricultural lands to the east of Local Road L1609.
- 1.2. The site comprises the northwest corner of a larger agricultural field and contains the existing agricultural shed. The shed is setback c. 7.5 metres from the roadside boundary and there is an animal pen arrangement between the shed and the road. There is a double-gated vehicular entrance of c.9.5m width at the northeast site corner, while the remainder of the roadside boundary consists of a dry stone wall. The levels of the site and the adjoining road gradually rise from east to west.
- 1.3. The wider surrounding area is generally of rural agricultural character. There is no development in proximity to the site on the southern side of the road. There are several houses on the opposite (northern) side of the road.

2.0 Proposed Development

- 2.1. The development comprises the retention of the existing agricultural structure and pen for the housing of horses, together with all ancillary site developments. The shed has a stated floor area of 63.5m² and has a mon-pitch roof to a maximum height of 4.045m. The lower walls of the shed consist of precast concrete, while the upper walls and roof have been finished in corrugated metal. The shed floor has yet to be completed. The pen to the front of the shed consists of an arrangement of metal gates, barriers and sheeting. Details submitted at further information stage include proposals to setback the existing stone wall roadside boundary a distance of 2.4m from the roadside edge and to plant a number of trees along the western site boundary.
- 2.2. The structure is intended for the housing of 2 horses for 12-14 weeks over the winter period. Straw bedding (45m³) will be used for animal effluent seepage and it is stated that unroofed farmyard manure storage (93m³) can be used after removal from the shed. There is an existing water connection to the site and an existing soakaway at the southeast corner for uncontaminated water.

3.0 Planning Authority Decision

3.1. Decision

By order dated 15th March 2021, Mayo County Council (MCC) issued notification of the decision to Grant Permission subject to 9 conditions.

Condition no. 3 requires compliance with the European Union (Good Agricultural Practice for the Protection of waters) 2017, S.I. No. 605 of 2017.

Condition No. 7 requires the setback and reconstruction of the roadside boundary within 6 months.

Condition No. 8 requires the planting of trees/hedges along the eastern and western site boundaries within 6 months.

3.2. Planning Authority Reports

3.2.1. On the basis of the initial Planner's Report and recommendation (16th December 2020), further information was requested on 6th January 2021 relating to:

- Disposal of uncontaminated surface water and contaminated soiled water, and proposals for the collection, storage and disposal of effluent waste.
- Details of water supply.
- Clarification of alternative locations available for the development.
- Proposals to setback and reconstruct the existing roadside boundary.
- Proposals for site landscaping.

3.2.2. The applicant responded to this request on 22nd February 2021. Having considered the response, the subsequent Planner's Report (11th March 2021) deemed the development to be acceptable in accordance with the proper planning and sustainable development of the area. A grant of permission was recommended subject to conditions, which forms the basis of the MCC decision to grant permission.

3.3. Other Technical Reports

Area Engineer: The report of 25th November 2020 recommends the setback of the roadside boundary and installation of roadside gullies.

Environment, Climate Change and Agriculture: The report of 1st March 2021 recommended that a screening report be submitted in relation to impacts on the Natura 2000 network.

3.4. **Prescribed Bodies**

Transport Infrastructure Ireland: No observations to make.

3.5. **Third Party Observations**

One third party observation was made on this application by the appellants. The issues raised are covered in the grounds of appeal (see Section 6.0 of this report).

4.0 **Planning History**

None.

5.0 **Policy and Context**

5.1. **Mayo County Development Plan 2014-2020**

- 5.1.1. The operative plan for the area is the Mayo County Development Plan 2014 - 2020, the lifetime of which has been extended in accordance with the provisions of sections 11(1)(b) and 11D of the Planning and Development Act 2000 (as amended).

Agriculture

- 5.1.2. **Objective AG-01**: It is an objective of the Council to support the sustainable development of agriculture, with emphasis on local food supply and agriculture diversification (e.g. agri-business and tourism enterprises) where it can be demonstrated that the development will not have significant adverse effects on the environment, including the integrity of the Natura 2000 network, residential amenity or visual amenity.
- 5.1.3. Volume 2 of the development plan sets out planning guidance and standards for development in the county, including agricultural development. The principal aim is to support agriculture in the County subject to best environmental standards which promote maintaining good water quality and biodiversity. Farming activities shall

comply with the provisions of S.I. No. 610 of 2010, European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2010 (now superseded by 2017 Regulations).

Water Quality

- 5.1.4. **Objective WQ-01:** It is an objective of the Council to implement the Western River Basin District Management Plan Water Matters 2009-2015 to ensure the protection, restoration and sustainable use of all waters in the County, including rivers, lakes, ground water, coastal and transitional waters, and to restrict development likely to lead to deterioration in water quality or quantity.

Landscape Protection

- 5.1.5. **Objectives LP-01 and LP-02** aim, through the Landscape Appraisal of County Mayo, to recognise and facilitate appropriate development in a manner that has regard to the character and sensitivity of the landscape and to ensure that development will not have a disproportionate effect on the existing or future character of a landscape in terms of location, design and visual prominence.

Traffic

- 5.1.6. Section 38.1.1 of Volume 2 states that road infrastructure shall allow for the safe and efficient movement of vehicles and pedestrians. Section 38.3 sets out access visibility requirements.

5.2. **Natural Heritage Designations**

The nearest Natura 2000 site is the Ardkill Turlough SAC (c. 1km to the northeast). Other Natura 2000 sites in the surrounding area include the Skealaghan Turlough SAC (c. 2km to the northwest), Greghans Turlough (c. 2.5km to the northeast), Kilglassan/Caheravoostia Turlough Complex (c. 3km to the northeast), and the Clyard Kettle-Holes SAC (c. 3.5km to the southwest).

5.3 **Environmental Impact Assessment**

The development is not of a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). Accordingly, I am satisfied that EIA or EIA screening is not required in this case.

6.0 The Appeal

6.1. Grounds of Appeal

The decision of MCC to grant permission has been appealed by Fred Cleary & Ann Sheridan, of Kilquire, Kilmaine, Co. Mayo. The grounds of appeal can be summarised as follows:

- There is no visibility to the west from the site entrance/exit and the additional traffic will lead to the endangerment of road users. The Planning Authority's requirement for a roadside setback (2.4m) cannot be done on property outside the site boundary and these improvements would not facilitate the development on such a limited site.
- The appellants own the houses and land across the road. The 'site' across the road is overlooked by the shed and will present an eyesore if any of their families wish to build a home. The shed will be unsightly for all road users, will not attract further development, will reduce the value of property in the area, and should be refused on these grounds. The existing screening to the north of the site is within the appellants' property and should not be taken into account.
- The idea that the development is for 2 horses only is not verified. If the development had been located more than 100m from the appellants' homes, it would never have been an issue. It has been carried out without any consultation or care for the planning system.
- Flooding of the larger field, coupled with the absence of proposals for the safe disposal of effluent and waste waters, endangers the pollution of groundwaters. An 'ad hoc' development of this type will set a precedent for further such unauthorised development.
- There is no need for the shed at this location as the applicant has a large farm, farmyard and associated facilities less than 5 miles away and good farming practice encourages centralisation.
- The Site Notice has incorrectly stated that the application is for 'full planning permission' instead of 'retention permission' and should be deemed invalid.

6.2. Applicant Response

The applicant's response to the grounds of appeal can be summarised as follows:

- The development complies with the road safety requirements of Development Plan. The entrance to the site is an upgrade of a previously existing entrance and the proposed roadside boundary setback will further improve visibility. Reversing of vehicles onto the road would not be required and farm vehicles will have increased visibility due to their increased height from the road level.
- Existing and proposed landscaping/screening will conceal any negative visual impact. It is accepted that the trees to the north are not within the ownership of the applicant and it is within the control of the appellants to retain this screening.
- The development will enhance environmental impacts by housing animals that would otherwise spend the winter on grass and potentially cause poaching and environmental concerns. Uncontaminated wastewater will be disposed through on-site soakaways and contaminated wastewater will be contained within the existing structure as indicated in Teagasc correspondence. The shed has the capacity to store 45m³, which is more than sufficient to cater for 2 horses (41.2m³).
- The structure is required to provide winter housing in accordance with good farming practice and animal welfare, and these are the only lands available to the applicant to locate this shed. It is not intended to construct any further structures at this location. If the situation should change then any proposal would be subject to planning permission.
- The proposal would be in accordance with Development Plan aims and objectives to support agricultural development subject to best environmental standards.

6.3. Planning Authority Response

None.

6.4. Observations

None.

7.0 Assessment

7.1 Introduction

7.1.1. Having regard to the documentation submitted in connection with the application and the appeal, and having inspected the site, I consider that the main issues for assessment are as follows:

- The principle of the development
- Visual amenity
- Traffic
- Flooding & effluent storage/disposal
- Validity
- Appropriate Assessment.

7.2 The principle of the development

7.2.1 The proposal involves the retention of an existing agricultural shed, pen and associated works within a rural area. Objective AG-01 of the Development Plan supports the sustainable development of agriculture and Section 29.3 (Vol. 2 of the Plan) states that rural enterprises such as agriculture shall be considered in all rural areas subject to no adverse impacts on neighbouring properties and the environment.

7.2.2 I note the appellants' suggestions regarding the availability of more suitable lands and the applicant's rebuttal of same. However, I am satisfied that the application on this site should be judged on its merits and that it is acceptable in principle, subject to compliance with appropriate standards and demonstration that the development will not have significant adverse effects on the environment.

7.3 Visual Amenity

- 7.3.1. The CDP Landscape Appraisal of County Mayo sets out four Principal Policy Areas (shown on Map 3A Landscape Protection Policy Areas) and a Landscape Sensitivity Matrix (Figure 3), which outlines the suitability of certain classes of development within each policy area. The appeal site is in Policy Area 4 – Drumlins and Inland Lowland, the area of lowest landscape sensitivity. The landscape sensitivity matrix indicates that “industrial/commercial” developments, which is considered the most relevant development category in this case, have low potential to create adverse impacts on the existing landscape character. It states that such development is likely to be widely conceived as normal and appropriate unless siting and design are poor. The adjoining road is not a designated ‘Scenic Route’ and the site is not affected by any views to be preserved as identified in ‘Map 4’ of the Development Plan.
- 7.3.2. The existing structure is of relatively minor scale and height when considered in the context of typical rural development. The site is not overly exposed and is not located within an area of particular visual sensitivity. Having inspected the site I consider that the development has only a minimal visual impact and does not detract from the visual amenity of the area or the value/viability of existing or future property in the area.
- 7.3.3. I note the appeal comments regarding the existing tree screening on their lands to the north of the site. It is not disputed that these trees are outside the control of the applicant, but I do not consider that the successful visual integration of this minor structure is dependent on their retention in any way. I also note that condition no. 8 of the Planning Authority’s decision requires the planting of ‘dense trees/hedge’ along the western and eastern site boundaries, but I would have doubts about the viability of dense planting along the western boundary given the limited space available. In any case I do not consider that such comprehensive landscaping of the site is necessary given the limited scale and visual impact of the development.

7.4 Traffic

- 7.4.1. The development is accessed via the existing site/field entrance, which has been increased to a width of c. 9.5 metres. It is also proposed to improve site visibility to the west through the setback of the roadside boundary c. 2.4m from the roadside

edge for a distance of c. 20 metres. The adjoining road is narrow and poorly surfaced, with a straight alignment either side of the entrance. The road levels rise gradually from east to west. I did not encounter any other vehicles using the road on my site inspection and I would envisage that traffic levels are usually similarly low.

7.4.2. Table 9 of the Development Plan (Vol. 2) sets out access visibility requirements for developments (other than residential). The requirements are based on the 'design speed (kph)' of the relevant road. In this case the planning authority has not clarified the 'design speed' for this road and, accordingly, the visibility requirements have not been clarified. However, the planning authority is satisfied that the development is acceptable subject to the setback of the roadside boundary.

7.4.3 I am conscious that this development involves the use of a long-established agricultural entrance, albeit that it has been significantly altered and widened in recent years. The alterations have improved visibility from the entrance/exit and I do not consider that the development to be retained would generate a significant volume of additional traffic. Traffic volumes are already quite limited, and I would envisage that traffic speeds are severely restricted by the narrow width and poor surface of the road. And while the additional setback of the roadside boundary would improve visibility, I am not convinced that it is a proportionate requirement having regard to the limited additional traffic associated with the development and existing visibility/traffic conditions along this stretch of road.

7.4.4 The roadside boundary consists of a dry-stone wall and Sections 32.1.1 and 35.2.1 of the Development Plan (Vol. 2) encourage the retention of such features where possible. I would agree that stone wall boundaries make an important contribution to the character of an area and help to assimilate new development in its context. And while I acknowledge that it is proposed to reconstruct the newly setback wall, I am not convinced that this will successfully mitigate the loss of the existing long-established wall. Therefore, having inspected the site and considered the existing visibility and traffic conditions, I do not consider that a further roadside boundary setback is necessary or desirable in this case. On balance, the retention of the existing stone wall in its current state is appropriate and I am satisfied that the existing access arrangements are acceptable and will not adversely impact on existing traffic conditions or road safety.

7.5 **Flooding & effluent storage/disposal**

- 7.5.1. The appeal raises concerns about flooding in the larger field and the potential for pollution of groundwater as a result of inadequate effluent storage and disposal. Having reviewed the available CFRAM mapping and GSI Groundwater mapping, there is no indication that the site or its surrounding fields have been the subject of historical flooding events or that they are within any of the predicted flood zone areas. I note that the appeal includes photographic evidence of ponding within the larger field and there is also evidence of this in aerial photography. However, the extent of ponding appears to be quite limited and is at a significant distance from the development.
- 7.5.2. The application includes Teagasc correspondence which outlines that the farmyard manure production associated with the development amounts to a storage requirement of 41.2m³ over the required 14-week period. It is stated that high straw usage will be kept under the animals to ensure that no seepage will be produced, and the shed has the capacity to store 45m³. In addition to this, the applicant has unroofed farmyard manure storage with a seepage tank and a net capacity of 93m³ for storage after removal from the shed.
- 7.5.3. Having regard to the above, I am satisfied that the application demonstrates adequate capacity and proposals for the storage and disposal of effluent, and that the development would provide improved measures for the management of animals and associated effluent. Ultimately, the management of effluent arising from agricultural activities is governed by the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017, and the applicant will be required to operate in accordance with the relevant DAFM specifications. Subject to compliance with these requirements, and notwithstanding the evidence of a limited extent of surface water flooding in the surrounding area, I am satisfied that the development would not give rise to a risk of water pollution or represent a threat to public health by reason of effluent storage and disposal impacts.

7.6. **Validity**

- 7.6.1. The appeal has questioned the validity of the application on the basis of the incorrect wording of the Site Notice. While I acknowledge that the section of wording quoted

by the appellants (i.e. section 1) does refer to 'Full Planning Permission', I am satisfied that a full reading of the notice (i.e. including section 2) clarifies that the application is for 'Planning permission to retain'. I consider that the application is not misleading in this respect and I am satisfied that this matter did not prevent the appellants from making representations. The above assessment represents my *de novo* consideration of all planning issues material to the development.

8.0 **Appropriate Assessment**

- 8.1 The nearest Natura 2000 site is the Ardkill Turlough SAC (c. 1km to the northeast). Other Natura 2000 sites in the surrounding area include the Skealaghan Turlough SAC (c. 2km to the northwest), Greghans Turlough (c. 2.5km to the northeast), Kilglassan/Caheravoostia Turlough Complex (c. 3km to the northeast), and the Clyard Kettle-Holes SAC (c. 3.5km to the southwest).
- 8.2 There are no surface water features on the site or surrounding area that would provide a pathway between the development and the surrounding Natura 2000 network. I acknowledge that there is theoretical potential for pathways via groundwater pollution, which has previously been addressed in this report. I consider that there would be no potential for impacts given the minor scale of the development, the separation distance and the assimilative capacity of potential connecting waters, and the proposals to provide improved management of effluent in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017. There is also limited potential for surface water contamination during the limited extent of construction works remaining, but I am satisfied that best-practice construction management will satisfactorily address this matter.
- 8.3 I am satisfied that any proposals incorporated within the development constitute standard best practice and no mitigation measures are relied upon for Appropriate Assessment screening. Having regard to the above preliminary examination, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment is not required.

9.0 Recommendation

Having regard to the above and the reasons and considerations set out hereunder, it is recommended that permission should be granted, subject to conditions.

10.0 Reasons and Considerations

Having regard to the established agricultural use of the overall landholding and the location of the site within a rural area, the character and pattern of development in the area, and the modest scale of the development to be retained, it is considered that, subject to compliance with the conditions set out below, the development to be retained would not seriously detract from the amenities of the area or the amenities of property in the vicinity, would not interfere with the safety and free flow of traffic, and would be acceptable in terms of effluent storage and disposal proposals. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application on 6th November 2020, as amended by proposals submitted on 22nd February 2021, 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 prior to use of the development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The shed shall be used only in strict accordance with a management schedule which shall be submitted to and agreed in writing with the planning authority, prior to use of the development. The management schedule shall be in accordance with the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended, and shall provide at least for the following:

- (a) Details of the number and types of animals to be housed.
- (b) The arrangements for the collection, storage and disposal of slurry.
- (c) 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 development and in the farmyard 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. All uncontaminated roof water from buildings and clean yard water 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.

5. The proposed roadside boundary setback is hereby not permitted, and the existing stone wall shall be retained in its current position.

Reason: In the interest of visual amenity.

Stephen Ward

Senior Planning Inspector

29th September 2021