



An  
Bord  
Pleanála

## Inspector's Report 310022-21

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<b>Development</b>	Construct agricultural building and all ancillary site developments.
<b>Location</b>	Cloonmonad, Westport, Co. Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	21/83
<b>Applicant(s)</b>	Brendan O'Malley
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party vs. Refusal
<b>Appellant(s)</b>	Brendan O'Malley
<b>Observer(s)</b>	Phil Bourke & Ann Conway Thomas & Josephine McGrann
<b>Prescribed Bodies</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> August 2021
<b>Inspector</b>	Stephen Ward

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.17 ha and is located close to the 'Quay' area at the western end of Westport. The site is accessed via a narrow cul-de-sac lane that runs to the south of the Upper Quay road, close to its junction with the Quay Road. An existing agricultural gate on the laneway provides access to a roughly surfaced lane within the appeal site.
- 1.2. The site comprises the northeast corner of the applicant's larger agricultural holding at this location (c.4.67 ha). The site contains an existing derelict building and a machinery shed at its southern end. Apart from the internal laneway, the site is bounded by green metal palisade fencing. While the access road levels gradually rise from north to south, levels within the site itself fall marginally to the south.
- 1.3. Lands to the east and northeast of the site generally consist of various modern suburban housing developments, while further to the north is comprised of more mature terraced housing along Upper Quay road. Land to the south and west comprises the undeveloped fields of the applicant's overall holding, which is currently in grazing use. The Old Railway Walk (part of the Westport Greenway) intersects the extreme southern end of the applicant's farmland.

## 2.0 Proposed Development

- 2.1. The development comprises the construction of an agricultural building to the western side of the existing machinery shed. The shed has a stated floor area of 83m<sup>2</sup>, including 2 enclosed roofed pens and an open-sided roofed passage adjoining the existing shed. The building would have a maximum height of 5.081m and the upper walls and roof would be finished in metal sheeting to match the existing shed. The appeal details state that the building will be used for the housing of the applicant's cattle at this location (herd of 10-15) during the winter months and that it will be a dry-bed shed. There will be no slurry generated from the development and all animal bedding will be removed from the site by the applicant.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 29<sup>th</sup> March 2021, Mayo County Council (MCC) issued notification of the decision to refuse permission for the following reasons:

- 1. The proposed development would materially contravene the development objective LUO-03 of the Westport Town & Environs Development Plan 2010-2016 (incorporating variations 1-4) as extended which states that 'it is an objective of the Council that uses, other than the primary use for which the land is zoned, may be permitted provided they do not conflict with the primary land use zoning matrix table outlined in Section 5'. The proposed agricultural development is not a permissible use on lands zoned residential phase 2 in the Land Use Zoning Matrix. Therefore, the development proposed would be contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the location of the proposed development in a densely populated residential area and the nature of the proposed development which includes the housing of livestock, it is considered that the proposed development would negatively impact upon the residential amenity of the surrounding residential properties. Therefore, the proposed development would seriously injure the amenities, and depreciate the value of the property in the vicinity and be contrary to the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

3.2.1. The MCC Planner's Report can be summarised as follows:

- The site is located within 1200mm (*sic*) of the Clew Bay Complex SAC. However, having regard to the distance between the development and the SAC, MCC is of the opinion that no appropriate assessment issues arise.
- The site is within lands zoned as residential phase 2 in the Westport Town & Environs Development Plan and agricultural development is not a permissible use according to the land use zoning matrix. Therefore, the development

would materially contravene development objective LUO-03, which states that *'it is an objective of the Council that uses, other than the primary use for which the land is zoned, may be permitted provided they do not conflict with the primary land use zoning matrix table outlined in Section 5'*.

- MCC is also concerned about the close proximity of the development to a significant number of residential properties. The drawings indicate that the building will be used to house livestock and MCC is of the opinion that this would negatively impact on residential amenity with regards to odour, noise and general disturbance.
- A refusal of permission was recommended, and this forms the basis of the MCC decision as outlined above.

### 3.3. Other Technical Reports

Area Engineer: No objections subject to conditions.

### 3.4. Prescribed Bodies

None.

### 3.5. Third Party Observations

Two third party observations were made on this application by Phil Bourke & Ann Conway on behalf of The Quay Residents Association, and by Thomas & Josephine McGrann. Similar observations have been made by these parties on the appeal and are covered in Section 6.0 of this report.

## 4.0 Planning History

**P.A. Reg. Ref. 17/740**: Permission granted (19/2/18) to the applicant to retain agricultural barn on the appeal site. Condition no. 2 requires that the shed shall be used solely for the storage of fodder, machinery and materials ancillary to the applicant's farming activity at this location.

According to the documentation on file, it would also appear that the following applies to the site and/or part of the adjoining farmlands:

**ABP Ref. No. PL 84.121865:** Permission refused (22/2/01) to Tom Joyce for the construction of 20 houses for the following reason:

*Development of the kind proposed would be premature pending the determination by the planning authority of a road layout for the area. The said road layout refers to a proposed link road from the Leenane Road to The Quay, along the old railway line, that is envisaged will service the development lands at Cloonmonad, including the site, which proposal is considered reasonable. The proposed development would, therefore, be contrary to the proper planning and development of the area.*

**ABP Ref. No. PL 84.105767:** Permission refused (24/8/98) for the construction of 34 houses for the following reasons:

*1. Development of the kind proposed would be premature pending the determination by the planning authority of a road layout for the area. The said road layout refers to a proposed link road from the Leenane Road to the Quay, along the old railway line, that is envisaged will service the development lands at Cloonmonad, including the site, which proposal is considered reasonable. The proposed development would, therefore, be contrary to the proper planning and development of the area.*

*2. The proposed access will result in the creation of a wider gap in the existing street frontage which would be inconsistent and out of character with the established pattern of development in the area and would, accordingly, constitute an incongruous feature in the streetscape and would seriously injure the amenity and depreciate the value of property in the vicinity.*

## 5.0 Policy and Context

### 5.1. Westport Town & Environs Development Plan 2010-2016

- 5.1.1. The lifetime of the Westport Town & Environs Development Plan 2010 – 2016 was automatically extended in accordance with the provisions of section 11A of the Planning and Development Act 2000 (as amended) and it remains the operative Development Plan for the area.
- 5.1.2. The Core Strategy of the Plan identifies three phases of lands zoned for residential development. Phase I comprises of lands (c.46 ha) required for the plan period (to 2016) and are serviced and adjacent to the built-up area. Lands zoned Residential Phase II comprise of undeveloped lands which are serviced and are within easy reach of the town centre and/or centres of population. Lands zoned Residential Phase III comprise of undeveloped lands which are serviced and generally on the outer edge of the plan area. Relevant objectives include the following:
- LUO-04** It is an objective of the Council to implement the Development Strategy and Core Strategy as outlined in Section 3 of this plan.
- LUO-05** It is an objective of the Council that lands phased for development shall only be considered for development when 70% of the land in the previous phase has been fully developed and subject to the establishment of proven evidence based demand for the development in accordance with the Regional Planning Guidelines for the West Region.
- 5.1.3. According to Map 1 of the Plan, the subject lands are located within lands zoned as 'A1 Residential Phase I High Density (10 units/acre or 25 units/ha)'. Section 5 of the Plan sets out the land use zoning objectives and states under '(A) Residential' that '*It is an objective of the Residential land use to protect, improve and develop residential areas and to provide for facilities and amenities incidental to those residential areas, where appropriate*'. It states that uses which would be detrimental to residential amenities will not be permitted.
- 5.1.4. The 'Zoning Matrix Legend' indicates uses generally permitted, open for consideration or not permitted in each land use zone. Objective LUO-03 states as follows:

**LUO-03** It is an objective of the Council that uses, other than the primary use for which an area is zoned, may be permitted provided they do not conflict with the primary land use zoning objective and/or matrix table set out in Section 5.

5.1.5. Section 7 of the Plan incorporates development control standards relating to various types of development. The standards are intended to provide guidance towards achieving a high quality of development and it is stated that the Council will apply the standards with discretion and having regard to the particular circumstances of a particular site and development. Section 7.1 sets out guidance in relation to 'Roadside Development', addressing issues such as road safety and capacity.

5.1.6. 'Water Quality' policies and objectives within the Plan include the following:

**WP-01** It is the policy of the Councils to implement the provisions of Water Pollution legislation, to prevent the discharge of pollutants to public sewers, watercourses and the Carrowbeg River.

**WO-01** It is an objective of the Council, through implementation of the EU Water Framework Directive, the Western River Basin Management Plan and other associated legislation, to ensure the protection and improvement of all drinking water, surface water, ground waters, coastal and estuarine water in the county.

## 5.2. **Natural Heritage Designations**

The nearest Natura 2000 site is the Clew Bay Complex SAC, which is located approximately 250 metres to the north of the appeal site.

## 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 refuse permission has been appealed by the applicant, Brendan O'Malley. The grounds of appeal can be summarised as follows:

- The applicant currently farms a herd of 10-15 cattle on this land (c. 4.67ha) and does not own any other land. The proposed development is intended to house the animals in accordance with good farming and environmental practice. In order to continue these modest farming activities, it is imperative that this dry-bed shed is permitted.
- While the land zoning is accepted and appreciated, not permitting this development would contravene objective LOU-02 of the Development Plan, which is an objective to ensure that all development is absorbed into the landscape regardless of its zoning.
- The current use of the land is agriculture, albeit in a very light nature, and the proposed development has been designed to absorb into the existing surroundings. It is suggested that the construction of residential properties in this vicinity would, in fact, contravene objective LOU-02.
- The development will be contained within an existing fenced farmyard, which will not be extended by the proposed development.
- The existing shed on site was granted by MCC within the same policy context and was deemed to comply with the Development Plan. MCC now seek to contradict their previous decision by refusing this application.
- The applicant appreciates the proximity of the development to residences and greatly respects this in his farming practices. Prior to the applicant acquiring the land it had been subject to anti-social behaviour. The applicant has secured and enhanced the land, and this has impacted positively on the residential amenity of surrounding properties.
- There are no discharges, odour or noise emitting from the farmyard. The refusal of permission will not change practices and will result in continued environmental and animal welfare problems.
- The proposed development will not change the existing access arrangements or vehicle movements. There will continue to be no requirement for lorries, low loaders, or slurry trucks. The only required vehicles will continue to be a jeep and trailer, and very infrequently a tractor and bale handler to transport



bales to the farmyard complex. There will be no requirement for slurry trucks as all animal bedding will be removed in a trailer towed by a jeep or van.

- With regard to odour/effluent concerns, it is stated that the proposed development will improve ongoing practice. The farmyard has been active in its current state for circa 10 of the last 30 years and the applicant has not had any complaints about quality of life or odour/effluent.
- The existing access road, including the Irish Water combined sewer, is already subject to use by large vehicles. The proposed development would not require access by any such machinery.
- The applicant previously applied for permission to construct a shed on lands to the south (P.A. Reg. Ref. 17/30). The application was withdrawn due to perceived concerns about negative impacts on the adjoining greenway/walkway users. This appeal site is the best alternative site for the construction of this building.
- The Mayo Development Plan 2014-2020 remains the overarching planning document for the area and a refusal of permission would contravene the policies within (Section 56.1 and 56.2). A refusal would also materially contravene the Draft Mayo County Development Plan 2021-2027.
- If permitted, there is no intention to further extend or intensify the extent of buildings or access activity and the applicant would welcome any conditions in this regard.

## 6.2. Planning Authority Response

None.

## 6.3. Observations

Two observations have been received from Phil Bourke & Ann Conway (No.7 Cherry Tree Avenue) on behalf of Quay Residents, and from Thomas & Josephine McGrann (1 Upper Quay). The issue raised in each submission are summarised below:

Phil Bourke & Ann Conway (on behalf of Quay Residents)

- The applicant's reference to previous anti-social behaviour at this location and his role in solving the problem is questioned. The matter is nothing to do with the current planning issue.
- The Development Plan references to agriculture, as contained in the appeal, relate to operations at proper locations. It is clear from the MCC refusal that the existing activity at the site should not be allowed as it contravenes the Land Use Zoning Matrix. Therefore, the refusal to allow the additional development is obviously correct.
- The existing building was constructed without any planning permission or consultation with residents and its existence is highly unpopular. The Board's Inspector previously commented (8<sup>th</sup> February 2001) that the farm is landlocked and alarmingly local planning continued with a policy of granting retention. The observation also questions the validity of another small shed adjacent to the site fencing.
- The applicant's intentions for winter housing are commendable, but the proposal is in the wrong location in a densely populated area.
- There is an odour from current farming activities from time to time and properties are overlooked by the current shed. The shed is too close to the pre-existing properties and they are devalued as a direct result of these impacts.
- The access laneway does not facilitate heavy vehicles. This is a historical local access for residents, who are being put in danger.
- The impact of a refusal on the applicant's livelihood cannot be a factor in planning decisions. The applicant is also in other employment, but the proposed development should not be permitted at the expense of local residents. The applicant has stated his full intention to continue farming activities in their current form.
- The observation includes a copy of the original objection made to the planning authority and an accompanying petition signed by numerous local residents.

- The observation outlines their hope that the whole activity at this location should be stopped and that the appeal should be refused.

### Thomas & Josephine McGrann

- The observers are long-standing residents, and their property adjoins the existing laneway to the site. Their property would not have the foundations to withstand the significant increase in heavy vehicular traffic.
- The laneway is used by small vehicles and pedestrians and the additional traffic is likely to increase the potential of an accident. The laneway is 4.064m wide at its widest point and is not compatible with current and future heavy vehicle usage associated with the development.
- A main sewer is located beneath the centre of the laneway and it is maintained by the local authority and/or Irish Water.
- The appellant made a previous attempt to create a commercial car park / campervan facility within the property in 2017, for which a planning enforcement notice (PE55/17) was issued (copies enclosed).
- The observation supports the decision of the local authority and the petition signed by local residents and contends that a previous Board decision (ABP Ref. PL 84.121865) justifies their concerns about the use of the laneway.
- The inclusion of 'dry beds' could accommodate livestock and the applicant withdrew a previous similar application (P.A. Reg. Ref. 17/30). There is a separate access to the lands at Quarry Lane, which is somewhat more suitable for agricultural machinery.

## **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 and had regard to relevant policies and guidance, I consider that the main issues for assessment are as follows:

- Zoning & Policy
- Visual amenity

- Traffic
- Effluent storage/disposal
- Residential Amenity

## 7.2 Zoning & Policy

7.2.1 At the outset I wish to address the question of the relevant statutory plan and the appellant's references to the provisions of the Mayo County Development Plan 2014-2020 and the Draft Mayo County Development Plan 2021-2027. The current Mayo County Development Plan 2014-2020 (as varied and extended) clearly states that there is a 'separate stand alone statutory' Development Plan for Westport (i.e. the Westport Town & Environs Development Plan 2010-2016). Furthermore, the Draft Mayo County Development Plan 2021-2027 is still under preparation and will not take effect until completed and adopted. Accordingly, I am satisfied that the Westport Town & Environs Development Plan 2010-2016 (as varied and extended) continues to be the operative Plan for the area in accordance with the provisions of Section 11A of the Planning and Development Act 2000 (as amended).

7.2.2 While the Planning Authority has based its decision on a 'Residential Phase II' zoning for the site, I consider that the site is, in fact, zoned 'A1 Residential Phase I High Density (10 units/acre or 25 units/ha)' according to Map 1 of the Development Plan. I acknowledge that the site bounds the 'Residential Phase II' lands to the west and south, and that the width of the perimeter boundary line for the 'Phase II' lands encroaches onto the appeal site. However, it appears clear to me that the actual site boundary fence forms the delineation between the 'A1' and 'Phase II' lands, and I am satisfied that 'A1' is the correct zoning to apply to the site. For clarity, it should also be noted that objective LUO-03 has not been quoted in full in refusal reason no. 1, and it should state '*It is an objective of the Council that uses, other than the primary use for which an area is zoned, may be permitted provided they do not conflict with the primary land use zoning objective and/or matrix table set out in Section 5*' (my underlined emphasis was omitted in the MCC decision.)

7.2.3 As outlined above, objective LUO-03 refers to uses that conflict with either a 'zoning objective' and/or the 'matrix table'. Looking firstly at 'zoning objectives', I note that Section 5 of the Development Plan sets out the 'Land Use Zoning Objectives' and

states that the objective for the '(A) Residential' zone is to '*protect, improve and develop residential areas and to provide for facilities and amenities incidental to those residential areas, where appropriate*'. It states that other ancillary uses are 'permitted' or 'open to consideration' in the zone but uses which would be detrimental to the residential amenities will not be permitted (examples such as industry, warehouses and repair garages are quoted). While the question of what uses would be 'detrimental to the residential amenities' is open to interpretation and requires further assessment, I accept that the 'matrix table' provides clarity on the matter by outlining that a 'cattle shed' use is 'not permitted' in the 'A1 Residential High' zone. Therefore, I consider that the proposed use does conflict with 'matrix table' and, by extension, conflicts with Objective LUO-03.

7.2.4 However, Section 5 of the Plan also deals with 'non-conforming uses', which includes uses that do not conform with the zoning objectives for the area, but which have 'valid permissions'. It is stated that the Planning Authority may permit extensions and improvements of such premises where the proposed development would not be seriously injurious to the amenities of the area and would not prejudice its proper planning and sustainable development. I am satisfied that the use of the site for agricultural purposes benefits from a valid permission (P.A. Reg. Ref. 17/740) and that the proposed development can be considered under these 'non-conforming use' provisions.

7.2.5 Apart from the question of zoning, the Development Plan contains little other policy guidance on agricultural developments. It is stated that agricultural uses and buildings will be generally permitted in the '(K) Agriculture/High Amenity' zone.

7.2.6 In conclusion regarding Development Plan zoning and policy, I accept that the proposed development conflicts with the 'A1' zoning for the site and Objective LUO-03. However, having regard to the established and permitted use of the site, I consider that the proposed development can be considered as an extension/improvement to an unauthorised use in accordance with the 'non-conforming use' provisions of the Development Plan. Therefore, the acceptability of the development will be subject to further assessment of its impacts on the amenities of the area and other issues as discussed in the following sections.

### 7.3 Visual Amenity

7.3.1. The site hosts an existing agricultural development containing an unroofed derelict building, a machinery shed and associated hardstanding areas. It adjoins the existing built-up residential environs of the town to the east and north, while the surrounding area to the west and south is generally of an undeveloped rural character with views of Croagh Patrick in the distance. The Development Plan does not identify any views or prospects to be protected in the vicinity of the site.

Objective OO-14 of the Plan aims to protect the amenity value of the Railway Line Walk further south of the site.

7.3.2. The proposed structure is of a relatively minor scale and height when considered in the context of the existing development on site. With a height of c. 5 metres the proposed development would be marginally taller than the existing shed. However, the proposed floor area (83m<sup>2</sup>) is significantly smaller than the existing structure (c. 150m<sup>2</sup>). Therefore, I consider that the proposed development would be visually subordinate to the existing development on site. Furthermore, I consider that the existing shed would screen the proposed development from existing residential development to the east, and that the proposal would therefore integrate more suitably with the undeveloped character of the agricultural lands to the west. The site is not overly exposed and is not located within an area of visual sensitivity. The proposed development would be almost 200m from the Railway walk to the south and I am satisfied that it would not detract from the amenity of this facility. Otherwise, the proposed development would be well distanced/screened from surrounding public vantage points.

7.3.3 Having regard to the above and my inspection of the site, I consider that the proposed development would be consistent with the established character of the site and would have only a minimal additional visual impact. Accordingly, the proposed development would not be seriously injurious to the visual amenities of the area and I have no objection in this regard.

### 7.4 Traffic

7.4.1. The development is accessed via a narrow cul-de-sac lane that runs to the south of the Upper Quay road and terminates at the entrance to the Cherry Tree Avenue

development to the northeast of the appeal site. Pedestrian access is maintained to Cherry Tree Avenue, but vehicles cannot travel any further than this point. Apart from the proposed development, I noted only 2 other potential vehicular entrances on the lane, and I note the observer's comments that vehicular access to the lane is shared between the appellant and three other households. I encountered no vehicular traffic using the lane on my inspection, but I did note its use by pedestrians walking between the 'Quay' area and the residential developments to the east of the appeal site.

7.4.2. I acknowledge that the proposed development does not propose to alter the existing access arrangements in any way. The question is, therefore, whether the proposed development will result in an intensification of the number or type of traffic movements at this location and whether this will have significant adverse traffic impacts. I note the concerns of the observers regarding the potential increased use of large vehicles/machinery, as well as the appellant's contention that traffic movements will not be altered by the proposed development. The planning authority did not raise any objection in relation to traffic impacts.

7.4.3 On balance, I consider that the purpose of the proposed development is to provide improved winter housing facilities for an established agricultural practice. The proposed shed is relatively small in scale and would not cater for any significant increase in cattle numbers. Accordingly, I do not consider that there will be any significant increase in traffic movements or any significant change in the size or type of vehicles/machinery. I accept that the existing lane is narrow and that there would be some occasional heavy vehicle use associated with the existing and proposed development. However, I consider that this would happen on a quite infrequent basis, which would not be significantly increased by the proposed development, and I am satisfied that this would not endanger vehicular or pedestrian movements along the laneway.

7.4.4 The laneway joins with the wider public road network through a gap between 2 houses along Upper Quay to the north of the appeal site. There is a wide footpath with a dropped kerb and 'yellow box' at this location, with on-street parking either side of the junction. The main junction at this location with Quay Road is formed by a triangular road layout around a central grotto. While traffic volumes are quite high on the main Quay Road, I consider that there would be limited traffic volumes along

Upper Quay at the junction with the subject laneway. Having regard to these conditions within the speed limit zone and the absence of any significant increase in traffic movements associated with the proposed development, I am satisfied that traffic congestion or road safety will not be adversely affected and I have no objections in this regard. I do not consider that the traffic associated with the proposed development can be reasonably compared to that associated with the previous residential applications refused by the Board.

## **7.5 Effluent storage/disposal**

- 7.5.1. The application includes limited information regarding the storage and disposal of effluent associated with the proposed development. The appeal indicates that the dry bed shed will house 10-15 cattle and that it will be carried out in accordance with good farming and environmental practice. It is stated that animal bedding will be removed by the applicant.
- 7.5.2. In principle, I am satisfied that the proposed development would provide improved winter housing measures for the management of animals and associated effluent. 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. A condition can be attached to any permission requiring that details shall be agreed prior to the commencement of development. Subject to compliance with these requirements, I am satisfied that the development would not give rise to a risk of pollution or represent a threat to public health by reason of effluent storage or disposal impacts.

## **7.6. Residential Amenity**

- 7.6.1 The proximity of the site to the adjoining residential area is acknowledged, as are the concerns raised by the observers in relation to visual impact, noise, odour and other disturbance. It should be noted that the scale shown on the site layout plan is incorrect, but I would estimate that the distance between the proposed development and the nearest dwellings (i.e. Harbour Village to the east) is approximately 30 metres. I should clarify that the 100-metre separation distance from dwellings, as cited in one of the submissions to the planning authority, relates to a condition /



limitation on exempted agricultural developments as per the Planning and Development Regulations 2001 (as amended). This restriction does not apply when planning permission is sought

- 7.6.2 In terms of visual impacts, I consider that the proposed development would largely be screened from the view from existing dwellings to the east and north by the existing shed and derelict building on site. The proposed shed is a significant distance from existing dwellings and is of a relatively small scale in the context of existing development on the site. Accordingly, I do not consider that the proposed shed would have any overbearing visual impacts on the surrounding dwellings.
- 7.6.3 In relation to noise and odour impacts, I consider that the established agricultural use of the applicant's site and adjoining lands must be a significant factor in the assessment of the application. Furthermore, given the nature of this location at the interface between the built-up area of the town and the undeveloped rural hinterland, it must be accepted that there will commonly be something of a juxtaposition between agricultural and residential uses. I would accept that the winter housing of animals within the proposed shed would have the impact of periodically concentrating any noise or odour impacts to some degree. However, having regard to the established use of the site, the relatively minor scale of the proposed development, and the separation distance from surrounding dwellings, I do not consider that any additional impacts associated with the proposed development would be so significant as to warrant a refusal of permission.
- 7.6.4 In conclusion, I consider that the proposed development is a reasonable expansion and improvement of existing facilities. I do not consider that the visual, noise, odour or other impacts associated with the development would be seriously injurious to the residential amenities of surrounding properties, and accordingly, there would be no adverse effect on the value of property in the vicinity.

## **7.7. Other Matters**

- 7.7.1. I note the observers' 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, particularly given the established use of the site.

- 7.7.2. The observers have raised concerns about the impacts of additional traffic on the structural stability of existing properties and the sewer located in the existing laneway. While I do not consider that the proposed development would result in any significant additional traffic impacts, I consider that the issue of property damage would be a civil matter for resolution between the relevant parties and is not a matter for the concern of the Board in this case.
- 7.7.3. One of the observers has also questioned the planning status of a separate small shed on the site. On inspection of the site, I noted the presence of a very small storage shed in the southwestern corner of the site. I do not consider that this shed has any material bearing on the current appeal and its planning status is a matter for investigation by the planning authority. Similarly, I do not consider that any alleged history of unauthorised development on these lands is relevant to the current application.

## **8.0 Appropriate Assessment**

- 8.1 The nearest Natura 2000 site is the Clew Bay Complex SAC, which is located approximately 250 metres to the north of the appeal site. There is a significant extent of residential and commercial development between the appeal site and the SAC site.
- 8.2 There are no surface water features on the site or in the immediate surrounding area that would provide a direct pathway between the development and the surrounding Natura 2000 network. The nearest hydrological pathway is the Ardmore river/stream, which runs approximately 300 metres to the south of the site and connects to Clew Bay. I acknowledge that there is always theoretical potential for indirect pathways via groundwater and/or surface water pollution. However, in this case I consider that there would be no potential for impacts given the minor scale of the development, the separation distance from the Natura 2000 network and the assimilative capacity of potential connecting waters, as well as the requirements to provide improved management of effluent in accordance with the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017.
- 8.3 I am satisfied that any practices incorporated within any permission would 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 Material Contravention

9.1 The Planning Authority's first reason for refusal states that the proposed development would materially contravene development objective LUO-03 on the basis of the 'residential phase 2' zoning and the 'zoning matrix table' contained in Section 5 of the Development Plan. I have previously outlined that the site is actually zoned 'A1 Residential Phase I High Density (10 units/acre or 25 units/ha)', and I would further add that the 'residential phase 2' zoning is not actually included in the 'zoning matrix table' in any case. Notwithstanding the above inaccuracies, I accept that the proposed use is 'not permitted' within the 'A1' zone according to the 'zoning matrix table' and that the proposed development conflicts with objective LUO-03 of the Development Plan. And while I have previously outlined my opinion that these provisions are qualified by the 'non-conforming uses' provision of the Development Plan, I will nonetheless address the question of 'material contravention' in light of the Planning Authority's decision.

9.2 Section 37(2)(b) of the Planning and Development Act 2000 (as amended) outlines that where a planning authority has decided to refuse permission on the basis of a material contravention of the development plan, the Board may only grant permission where it considers that one of the following circumstances apply:

*(i) the proposed development is of strategic or national importance,*

*(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*

*(iii) permission for the proposed development should be granted having regard to the regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in*

*the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*

*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

- 9.3 In considering the above criteria, I accept that the proposed development is clearly not of strategic or national importance and that point (i) above does not apply. Similarly, regarding point (iii), I do not consider that the proposed development would be significantly affected by regional or Ministerial policy/directives or the statutory obligations of the local authority. Accordingly, I consider that point (iii) does not apply to this case.
- 9.4 In relation to point (ii), I consider that there is a conflict in Section 5 of the Development Plan. On one hand, the 'matrix table' outlines that a 'cattle shed' is 'not permitted' within the 'A1' zone. However, this section of the Plan also contains qualifying provisions relating to 'non-conforming uses', which outline that extensions and improvements of such premises may be permitted where the proposed development would not be seriously injurious to the amenities of the area and would not prejudice its proper planning and sustainable development. I am satisfied that the use of the site for agricultural purposes benefits from a valid permission (P.A. Reg. Ref. 17/740) and, accordingly, is a 'non-conforming use'. Furthermore, I have outlined in my assessment that the proposed development would not be seriously injurious to the amenities of the area and would not prejudice its proper planning and sustainable development. Accordingly, I consider that the proposed development can be granted as a 'non-conforming use' as per Section 5 of the Development Plan, and that the provisions of point (ii) apply in this case.
- 9.5 Finally, regarding point (iv), I would highlight that the planning authority granted permission for the retention of the existing agricultural shed on site under P.A. Reg. Ref. 17/740. This permission was granted on 19<sup>th</sup> February 2018, which was after the latest variation to the Development Plan i.e. Variation No. 4 made on 16<sup>th</sup> January 2017. Therefore, I am satisfied that both the previous permission (i.e. 17/740) and the current appeal should be considered under the same Development Plan provisions. On review of the MCC Planner's Report for the previous permission,

it was stated that the site was zoned 'A3-Residential Phase 1', which is not consistent with the current 'A1' zoning. However, given that the Development Plan has not been varied since prior to the making of the previous application, it may be the case that the planning authority's reference to the 'A3' zoning was erroneous. In any case, the important point is that the planning authority permitted an agricultural development on the subject site at a time that it was zoned for residential uses under the current Development Plan. The pattern of development has not significantly changed since the granting of that previous permission and, accordingly, I consider that permission should be granted in this case under the provisions of point (iv).

9.6 In conclusion, and despite the inaccuracies contained in the planning authority's decision and the qualifying 'non-conforming uses' provisions of the Development Plan, I consider that, even if the Board is of the opinion that there would be a material contravention of the Development Plan, permission can be granted in this case under the provisions of Section 37(2)(b)(ii) having regard to the 'non-conforming use' provisions of the Plan, and under Section 37(2)(b)(iv) having regard to the pattern of development and the previous grant of permission on the site.

## 10.0 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.

## 11.0 Reasons and Considerations

Having regard to the established agricultural use of the site and adjoining lands, the character and pattern of development in the area, and the modest scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development 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.

While the proposed development would materially contravene the 'Zoning Matrix' and Objective LUO-03 of the Westport Town & Environs Development Plan 2010-2016, the Board is satisfied that the proposed development should be granted under Section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended) having regard to the authorised agricultural use of the site and the 'non-conforming use' provisions contained in Section 5 of the Development Plan, and under Section 37(2)(b)(iv) of the Planning and Development Act 2000 (as amended) having regard to the pattern of development in the area and the previous grant of permission for the retention of the existing agricultural shed on the site (P.A. Reg Ref. 17/740 refers).

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 5<sup>th</sup> 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 commencement 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 building 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 commencement 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 effluent.

(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 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 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 external sheeting finish on the proposed building shall match the colour of the existing shed on the site.

**Reason:** In the interest of visual amenity.

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Stephen Ward

Senior Planning Inspector

19<sup>th</sup> October 2021