



An
Bord
Pleanála

Inspector's Report ABP-311738-21

Development	Retention of storage shed, two loose sheds and slatted feeding area.
Location	MountLoftus, Goresbridge , Co Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21228
Applicant(s)	Deirdre Dalton & Joseph Lawlor
Type of Application	Permission for Retention
Planning Authority Decision	Grant Permission, subject to conditions
Type of Appeal	Third Party
Appellant(s)	Liam & Margaret Dalton
Observer(s)	None
Date of Site Inspection	17 th December 2021
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The site is located in the rural townland of Mount Loftus, Goresbridge. The village of Goresbridge is circa 2.4km to the north and Borris is circa 3.3km to the east. The River Barrow is also 1.2km to the east of the appeal site.
- 1.2. The site has a stated area of 1.1 hectares. It is accessed off the local road. The surrounding rural area is lowland in nature. The predominant land use is agriculture with sporadic housing along the local roads.
- 1.3. The site contains a house with two other dwelling units, a storage shed, two loose sheds, a slatted area and a bale storage area. The landholding associated with the farmyard is immediately to the east of the site and stated to comprise 30 hectares in total. There is a vehicular access to the main house to the west of the site, but this does not seem to be in use. The site is accessed from the local road at the southwest corner of the site via a short laneway.
- 1.4. The neighbouring dwelling to the north / north west is the appellants' property, which lies immediately adjacent to the appeal site. There are a number of dwellings to the south west, which are located 100m, 150m and 200m from the appeal site, respectively. The site of Mount Loftus House and farm complex (RPS ref. no. C368; NIAH ref. no. 12402503) is located 400m to the south east of the appeal site.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of a storage shed, two loose sheds, a slatted feeding area and a hardcore bale storage area. The storage shed is 4.7m in height and has a stated floor area of 146.4m²; the loose shed attached to the storage shed is 4.7m in height and has a stated floor area of 144m²; and the loose shed to the north is 5.4m in height and has a stated floor area of 208.8m². The slatted feeding area has a stated floor area of 160.8m² and the hardcore bale storage area has a stated floor area of 776m².

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to grant permission, subject to seven conditions. There are specific conditions included relating to the management of odour and noise (condition no.'s 5 and 6).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the Planning Officer notes the objection received and raises concerns regarding surface water, noise, groundwater and wells, and effluent storage and recommends further information. A second report, subsequent to the submission of a response to further information, recommends grant of permission consistent with the notification of decision which issued.

3.2.2. Other Technical Reports

A/Assistant Engineer – The report highlighted concerns about surface water, noise, risk to groundwater and effluent storage capacity.

Conservation Officer – No objection to the development.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

A submission was received from Liam and Margaret Dalton. The issues raised are generally similar to those referenced in the grounds of appeal. These include concerns regarding proximity of the development to their house, noise, odour, vermin, algae growth, smoke damage and visual impact/loss of light.

4.0 Planning History

None referenced in the report of the Planning Officer.

5.0 Policy Context

5.1. Kilkenny County Development Plan 2014-2020 (extended)

5.1.1. Chapter 6 Rural Development

Strategic Aim: “To manage rural change and guide development to ensure vibrant and sustainable rural areas whilst conserving and sustainably managing our environment and heritage.”

5.1.2. Section 6.2 Agriculture – “Agriculture is a vital part of the economic life of the County and is a major driver for sustaining, enhancing and maintaining the rural economy and culture.”

5.2. Natural Heritage Designations

The site is not located within or close to any European site. The closest Natura 2000 site is the River Barrow and River Nore SAC (site code: 002162) approx. 1.2km to the east.

5.3. EIA Screening

The development for retention and completion is not a class of development for which EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal was submitted by Liam and Margaret Dalton. The issues raised are as follows:

- Quoting exempted development regulations, contend that the development should not have been allowed to progress due to its size and proximity to their house.

- Contend that the condition attached to the grant of permission for surface water management system is not suitable.
- Contend that Condition No.4 is not adequate for the safe management of soiled water.
- Highlight that the Odour Management Plan was completed in July 2021 when there were no activities on the site. Advise that the smell of slurry emanating from the appeal site during the last wintering period was alarming.
- Query the results of the noise assessment and contend that there will be an excess of 5dB with the proposed noise barrier.
- Contend that Condition No.6 in relation to noise, air emissions and/or odours is unenforceable.
- Highlight that Condition No.7 confirms the lack of detail contained in the drawings.

6.2. Applicant Response

A response to the third party appeal was submitted by Aidan Kelly, Agri Design & Planning Services on behalf of the applicants Liam and Margaret Dalton. The issues raised are as follows:

- Confirm that the soakage proposed for all roof water and clean yard water will be replacing the existing system.
- Submits a revised NMP demonstrating a surplus storage for soiled water of 240m³.
- Submits an updated noise and odour report carried out when cattle were in the shed and the site was in full operation.
- State that one of the applicants, Joseph Lawlor, lives beside the sheds and tends to the animals. Advise that his daughter, Deirdre (also applicant), does not reside on the farm but will in the future.

- Confirm that all soiled water from the concrete area is directed to and collected within the slatted tank.

6.3. **Planning Authority Response**

The planning authority responded that they have no further comments to make.

6.4. **Observations**

None received.

6.5. **Further Responses**

The first response to the grounds of appeal was circulated to the Planning Authority and third party for comment. The following responses were received on foot of these further circulations.

- 6.5.1. The Planning Authority responded stating that they had no further comment to make.
- 6.5.2. The third party has responded reiterating their concerns about the proximity of the buildings on the appeal site to their dwelling and the timeline of when the farmyard was developed and extended. They express concerns in relation to the lack of evidence of tests for soakaways in relation to surface water disposal and highlight an issue with the allowance of only 160m² for rainfall. They claim that the noise monitoring station that was set up for the revised location is shielded by Sheds 6 and 7. They contend that there are inconsistencies in the NMP and that the Noise and Odour Assessment Reports are inconclusive and not reflective of the loose sheds being used exclusively for livestock.

7.0 Assessment

The following are considered to be the main issues relevant to the assessment of this appeal:

- Principle of development
- Noise
- Odour
- Effluent storage and disposal
- Surface water disposal
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. The proposal involves the retention of an existing storage shed, two loose sheds, a slatted feeding area and a bale storage area within a rural area. Section 6.2 of the Development Plan supports the sustainable development of agriculture and states that agriculture is a vital part of the economic life of the County and is a major driver for sustaining, enhancing and maintaining the rural economy and culture.
- 7.1.2. I note the appellants' suggestions regarding the availability of more suitable lands for locating these farm buildings. The farm buildings are equi-distance to the first party's house and the appellants' house but clearly associated with the first party's house and rear garden. The appellants submitted an earlier photograph stated to be taken in 2010, which showed no evidence of farm buildings on the site. The first parties do not dispute this and state that the majority of the sheds have been present for 9 years and the remaining development is present for 4 years. I am satisfied that the location of the farm buildings represents the most practical siting for this working farm and there is no obvious practical alternative location on the land holding.
- 7.1.3. I also note the appellants' contention that the development should not have been allowed to progress due to its size and proximity to their house. The appellants base this contention on the conditions and limitations for agricultural buildings contained within Part 3, Schedule 2, of the Planning & Development Regulations 2001 (as amended). The purpose of this part of the regulations is to provide clarity on what is considered exempted development in rural areas. It does not preclude a landowner

from applying for permission for a development that may be of greater scale than what is contained in the prescribed class(es), or the associated conditions and limitations, in these regulations.

- 7.1.4. 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 or adjoining properties.

7.2. Noise

- 7.2.1. The appellants raise the issue of noise and the adverse impact that this is having on their residential amenity. They point to the inadequacy of the Noise Impact Assessment Report submitted to the planning authority, which was carried out in July 2021 at a time of the year when no animals were present on the site.
- 7.2.2. The first parties have acknowledged some inadequacies in the original report by submitting an updated 72-Hour Noise Impact Assessment Report as a response to the appeal. This assessment was carried out between 1300 hours on the 12th of November and 0700 hours on the 15th November 2021. It is stated in the report that the loose shed was fully stocked with cattle during this period.
- 7.2.3. A total of 861 five-minute samples were recorded during this period. I am satisfied that the methodology used and the calculation of 30-minute samples gives a comprehensive assessment of the noise being generated on this site. I note the third party observation regarding the revised location for noise monitoring, but I am also satisfied that this location in the rear garden of the applicant's house would be reasonably representative of the possible noise occurrences in the appellants' rear garden and at the appellants' house.
- 7.2.4. Two of the five-minute samples exceeded the recommended daytime LAeq (55dB); none exceeded the recommended evening time LAeq (50dB); and two samples exceeded the recommended nighttime LAeq (45dB). There were no LA₉₀ exceedances and, of the 811 calculated 30-minute samples, there were no LAeq exceedances either. The exceedances are explained in Section 8.2 of the updated report¹. Two of these are indicated as one-off /short term intermittent noise events,

¹ P.20, 72-Hour Noise Impact Assessment Report, Panther Environmental Solutions

where the corresponding LA_{90(5-min)} results were 25 dB(A) and 27 dB(A), respectively. The other two exceedances are indicated as negligible. I note the basis for these exceedances and these results do not indicate excessive noise impact on the 3rd party property.

- 7.2.5. Section 10 of the updated report makes recommendations, which includes a Noise Management Programme (outlined in Appendix F of the report), a complaints procedure, and that any additional development of the site should be designed with noise management as a priority. These recommendations are noted and involve what I consider to be relatively simple and implementable measures.
- 7.2.6. On the day of my site inspection, there were livestock present in both loose sheds and on the slatted feeding area. I did not observe any excessive continuous or intermittent noise events associated with this working farm. Given the relatively small nature of the farmyard, I consider that the level of noise would be what would be normally associated with a land use of this nature and what would be expected in a rural area. I consider that these observations are consistent with the findings outlined in the updated Noise Impact Assessment Report.
- 7.2.7. I note the requirements of Condition No.5(b) on the decision of the planning authority to grant permission regarding the installation of noise barriers. I also note the associated recommendation contained within the original Noise Impact Assessment Report for the installation of a 3-metre high noise barrier at an approximate distance (< 4 metres) from the noise source.
- 7.2.8. On the basis of the information presented, including the noise report and my observations, I am satisfied that, subject to the good farm management and inclusion of the proposed noise barrier, the development would not give rise to excessive noise or significantly affect the residential amenities of the appellants or other properties in the vicinity.

7.3. **Odour**

- 7.3.1. The appellants also raise the issue of odour and the adverse impact that this is having on their residential amenity. They point to the inadequacy of the Odour Impact Assessment Report submitted to the planning authority, which was carried out in July 2021 at a time of the year when no animals were present on the site.

They contend that the smell of slurry emanating from the appeal site during the last wintering period was alarming.

- 7.3.2. The first parties have submitting an updated Odour Impact Assessment Report as a response to the appeal. This assessment was carried out on the 15th November 2021. The assessment was carried out in the same manner as in original report with same odour sources identified and the same odour sensitive locations (OSLs) used.
- 7.3.3. The original report was prepared in July 2021 with no animals present on the site and a prevailing south easterly wind. The updated report was prepared in November 2021 with animals present on the site and a prevailing north westerly wind. I am satisfied that the methodology used, the combination of results obtained in both the original report submitted to the planning authority and the updated report submitted as a response to this appeal provide a reasonably comprehensive assessment of odours emanating from the appeal site.
- 7.3.4. Odour assessments were carried out at five OSLs at various locations and distances from the appeal site. In relation to the appellants' house, the closest and most relevant is OSL2, which is located on the public road immediately to the west of their house and circa 75m west of the appeal site. No odour was detected at this location in either July or November. I acknowledge that the prevailing wind would have directed odours away from this OSL when animals were present on the site in November. However, the odour emanating from the loose sheds at that time was assessed as 'faint' and, consequently, would I consider to be unlikely to result in a significant odour impact at the appellants' house or the OSL even if the prevailing wind was in that direction.
- 7.3.5. On the day of my site inspection, there were livestock present in both loose sheds and on the slatted feeding area and I did not experience any excessive odours associated with this working farm.
- 7.3.6. I am satisfied that, subject to good farm management and house-keeping, the development would not give rise to excessive odours or affect the residential amenities of the appellants' or other properties in the vicinity.

7.4. **Effluent storage and disposal**

- 7.4.1. The appellants raise concerns about the adequacy of the proposed effluent storage and disposal system and contend that Condition No.4 attached to the grant of permission issued by the planning authority is not adequate for the safe management of soiled water.
- 7.4.2. The application includes Teagasc correspondence which outlines that the farmyard manure production associated with the development amounts to a storage requirement of 131.2m³ over the required 16-week period. It is stated that storage space provided is 278.3m³, which gives a surplus of 147.1m³.
- 7.4.3. The first party submitted a revised Nutrient Management Plan (NMP) as a response to the appeal. The revised plan indicates an increase in stock numbers from 40 animals in the original Teagasc correspondence to 71 animals in the revised NMP. Based on these animal numbers, there is a stated requirement for 224.96m³ of slurry storage over a 16-week period. It is stated in the revised NMP that there is 465.04m³ storage space provided, which gives a surplus of 240.11m³. The main difference between the figures for the total storage space provided in the original report and the updated report is explained by the inclusion of the two straw beds within the two loose sheds in the revised NMP figures.
- 7.4.4. The revised NMP also includes figures for the collection of soiled water entering the uncovered slatted tank. These figures are based on the predicted rainfall in the Kilkenny area and amounts to 58.8m³. The first party also confirms that no silage is stored on concrete as all silage is conserved as bale silage which, consequently, will not result in any soiled water run-off.
- 7.4.5. I note the third party observations about the revised calculations regarding the hard surface areas draining to the slatted tank and their contention that 160m² is an insufficient allowance for this. I calculate the precise area to be 161.76m² i.e. 24m x 6.74m, which in the order of the figure used by the first party in their calculations in the revised NMP.
- 7.4.6. 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, 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.

7.5. Surface water disposal

- 7.5.1. The third party raise concerns regarding the precise method of disposing surface water from the appeal site. They outline their concerns about how calculations and tests for soakaways were carried out and the nature of the condition attached by the Planning Authority requiring on-site disposal.
- 7.5.2. The first party did include a soakaway on the site layout plan (Drawing No.01) that was submitted to the Planning Authority with their planning application on 30th March 2021. A revised site layout plan submitted to the Planning Authority as a response to a further information request on 6th September 2021 demonstrates a revised soakaway with 65m³ storage. However, the accompanying Slurry & Water Management Report expressly states that clean water from the existing roof and hardstanding areas is piped to an existing field drain away from the yard.
- 7.5.3. I am satisfied that the calculations for the design of the soakaway are accurate but there is ambiguity in the documentation submitted with the planning application and this appeal. For clarity, I recommend including a condition requiring that all uncontaminated clean water from buildings and clean yard water shall be separately collected and discharged in a sealed system to adequate soakaways.

7.6. Appropriate Assessment

- 7.6.1. The appeal site is remote from any European site. The nearest Natura 2000 site, the River Barrow & River Nore SAC (site code: 002162), is situated 1.2km to the east of the appeal site. There is no hydrological connection to the River Barrow & River Nore SAC and it has no known habitat to support any of the Special Conservation Interests of these European sites.
- 7.6.2. Having regard to the nature, scale, and location of the proposed development, the nature of the receiving environment, and the separation distance to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the

proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European site.

8.0 Recommendation

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission for retention be granted for the development for the reasons and considerations and subject to the conditions set out below.

9.0 Reasons and Considerations

9.1. Having regard to the established agricultural use of the overall landholding and the location of the site within a rural area, to the character and pattern of development in the area, and to the 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, and would be acceptable in terms of effluent storage and disposal. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 6th day of September 2021 and particulars received by an Bord Pleanála on the 19th day of November 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 and the development shall be retained, carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>The sheds shall be used only in strict accordance with a management schedule which shall be submitted to and agreed in writing with the planning authority within eight weeks of this order. 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:</p> <p>(a) Details of the number and types of animals to be housed.</p> <p>(b) The arrangements for the collection, storage and disposal of slurry.</p> <p>(c) Arrangements for the cleansing of the buildings and structures.</p> <p>Reason: In order to avoid pollution and to protect residential amenity.</p>
3.	<p>Within a period of 8 weeks from the grant of this permission, the developer shall submit for the written approval of the planning authority details of the precise type, size and location of noise barriers as per the details submitted to the planning authority on the 6th day of September 2021 and confirmation that the barriers have been installed.</p> <p>Reason: In order to minimise noise and to protect residential amenity.</p>
4.	<p>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.</p> <p>Reason: In the interest of public health.</p>
5.	<p>All uncontaminated roof water from buildings and clean yard water shall be separately collected and discharged in a sealed system to 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.</p> <p>Reason: In order to ensure that the capacity of effluent and storage tanks is reserved for their specific purposes.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution of €3,132.00 (three thousand one hundred and thirty two euro) in respect of</p>

<p>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, as amended. The contribution shall be paid upon grant of permission 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.</p>

Liam Bowe
Planning Inspector

31st January 2022