



An
Bord
Pleanála

Inspector's Report

ABP-312309-21

Development	Construction of floodlighting together with all associated site works.
Location	Rose Cottage, Turnings, Straffan, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	211120
Applicant(s)	John and Jenny Curley.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Joseph and Martina Bryan.
Observer(s)	None.
Date of Site Inspection	7 th July 2022.
Inspector	Lucy Roche

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.966ha and is located in the townland of Turnings, Co. Kildare, approximately 2.5km east of Clane and 2.8km southeast of Straffan. The site comprises a dwelling, stables and sand arena.
- 1.2. Existing development in the area comprises a mix of low-density rural housing and agriculture. The appellant's property, comprising a detached single storey dwelling and its curtilage, is located to the north and east of the appeal site.

2.0 Proposed Development

- 2.1. Planning permission has been sought for the erection of new floodlighting, together with all associated siteworks at Rose Cottage, Turnings, Straffan, Co. Kildare. The proposed flooding lighting is to serve the existing equestrian sand arena previously granted planning permission under planning references 19/597 and 20/874
- 2.2. The site is served by public mains water and an on-site wastewater disposal system. Surface water is drained to a soakpit.

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council did by order decide to grant permission for the proposed development subject to 8 conditions, the following of which are of note:

Condition 2: The floodlights shall be operated in conjunction with the ancillary use of the domestic site. The floodlights shall not be used for any commercial purpose.

Reason: In the interests of clarity and to regulate the use of the development in the interest of proper planning and sustainable development

Condition 3: The floodlights shall not operate between 22:00 to 07:00 on any day

Reason: In the interest of residential amenity and protecting biodiversity

Condition 6 The developer shall comply with all future site lighting requirements of the planning authority in relation to adjusting the lights by re-aiming, the addition of louvres and shields and / dimming. This is to deal with any glare issues which may arise for road users and for adjacent lands which may only become apparent when the installation has commenced

Reason; in the interest of proper planning and sustainable development

3.2. Planning Authority Reports

3.2.1. Planning Reports

- In their initial report the case planner considers the principle of providing flooding lighting at an existing sports facility to be acceptable as it extends the operational period for which the facility can be utilised. They did however seek further information on the design, layout, specification and operational hours of the proposed lighting scheme along with details on the applicant's requirement for the floodlighting.
- The applicant's further information response was received by the Planning Authority on the 3rd November 2021 and was not deemed significant
- The second report of the case planner (Nov. 2021) considers the further information received. The case planner was satisfied that the proposed works are of a scale and nature appropriate to the existing rural area and residential nature of the site and that the proposal is compliant with the provisions of the Kildare County Development Plan. They recommended that permission be granted on this basis.

3.2.2. Other Technical Reports

Water Services: No objection

Transportation Dept: (01/09/2021) Requests further information in the form of a lighting reality drawing report, a lux contour drawing and ducting / wiring drawing

Public Lighting Report: (12/11/2021) Proposal is compliant with all Kildare County Council requirements for sports lighting installations

Environment: No objection

3.3. Prescribed Bodies

Irish Water: No objection

3.4. Third Party Observations

One third party submission was received during the course of the planning Authorities determination of the application. The main issues raised in the submission are:

- The lack of information on the frequency of use / operational hours of the proposed floodlighting
- The lack of justification for the need for flood lighting
- No report on potential overspill, sky glow or glare
- The design does not appear to include hoods/reflectors
- The position of lighting will impact residential amenity
- The appearance and height of lighting masts will affect visual amenity
- The applicant has recently received planning permission for stables and there is no foresight in the applications. The arena should be located to the rear of the stables further from existing dwellings
- No alternative options explored i.e. retractable floodlighting masts

4.0 Planning History

- 19/597 Permission granted (2019) for: 1) Extensions and alterations to existing cottage with replacement WWTS and recessed vehicular entrance etc (2) Stable block with 5 No. stables, associated concrete hard standing area, dung stead and effluent holding tank, machinery store, sand arena and all associated site works. Revised by significant further information including retention of 42 sqm rear extension
- 20/874 Permission granted (2020) for revisions to development previously permitted under 19/597 including relocating the proposed stable block (5 no. Stables); associated concrete hard standing areas, manure pit, effluent holding tank and associated siteworks westwards away from the neighbouring property boundaries; relocating the new sand arena, driveway and associated siteworks; relocating the existing Machinery Store and all associated siteworks westwards away from neighbouring property boundaries; replacing the existing septic tank and associated works with a proprietary waste water treatment system and associated siteworks in the same location; relocating the proposed Percolation Area & associated siteworks southwards away from neighbouring property boundaries

5.0 Policy Context

5.1. Development Plan

- The Kildare County development Plan 2017 to 2023 is the operate plan for the area.
- The site is located within the rural area and is not zoned.

5.2. Natural Heritage Designations

The appeal site is not located on or within close proximity to any designated site. There are a number of designated sites within the wider area the closest being –

- The Grand Canal pNHA which is located to the south and south and east of the site, c2.3km at its closest point.
- The Ballynafagh Bog SAC (Site Code 000391) which is located c8.5km to the west.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal lodged on behalf of Joseph and Martina Bryan, neighbouring landowners, against the decision of Kildare County Council to grant permission for the erection of new floodlighting at Rose Cottage, Turnings, Straffan, Co. Kildare. The grounds of appeal are summarised as follows:

- *Material changes to planning application:* Following a request for further information the applicant made material and significant alterations to the proposed development which were not reflected adequately in the application, site notices or site layout plan provided.
- *Design and scale of the proposed flooding lighting:* For transparency the applicant should have applied in either of the two previous applications for flood lighting. This would have given the appellants the opportunity to comment on the inappropriate location of the arena.
- *Needs assessment:* Limited information provided regarding the need for and the modus operandi associated with the level of flood lighting

proposed. Private coaches / riding instructors are employed to teach at the property. Flooding lighting would prolong the use of the arena and coaching which has become a form of noise pollution. Considering the applicant were able to continue the exercising of their horses, continue riding lessons and participate in competition without disruption they feel that it is unreasonable and not a necessary to have flood lighting at this location

- *Hours of use/noise pollution:* The permitted hours of use are excessive and will generate higher than normal levels of noise at night-time. This equestrian facility is not a sporting facility as referenced in the application and planners report – it was granted permission as a domestic facility ancillary to the residence
- *Lighting and light pollution:* The grant of permission does not address specific concerns of light pollution including - location, height, reflection off hard surfaces design, luminosity levels and light spill.
- *Unauthorised Berm:* This application does not include for the retention for the existing unauthorised ‘berm’ on site.
- *Injury to visual amenity:* The physical appearance of the lighting and the sheer height of the masts will have a negative visual impact. The level of lighting proposed is incongruous and excessive and will have an overwhelming impact on residential amenity.
- *Injury to Residential Amenity:* The stables and sand arena permitted in 2020 were to be ancillary to the residential property and not a commercial facility. The proposed flood lighting is of a commercial scale and will have a material impact on the appellants residence. Flood lighting until 10pm is against the amenity of existing dwellings. The scale of lighting proposed will have significant impacts on surrounding residences.
- *Bona fides of applicants:* The appellants are concerned that the applicants will not comply with the conditions of the planning application. They have a history of unauthorised development. In relation to development at Rose Cottage (the appeal site) they have not complied with their approved landscaping plan (under PRR19/597) resulting in authorised over planting.

they have constructed a large embankment to the rear of the appellants property. The appellants do not object to the 'berm' but state that it requires planning permission.

- *Legality of the application and unauthorised development:* It is open to the board to refuse permission under the provisions of Section 35 of the Planning and Development Act.

6.2. Applicant Response

- The home in which the applicants live is for a family who have a keen interest in horses and is for pure leisure purposes only and not for commercial use
- The Council are well experienced in carrying out screening of further information responses to determine if they are significant or not. They did not deem the further information response to be significant in this instance and there is no reason to doubt the integrity of their process.
- The purpose of proposing higher lighting columns (from 6m to 12m) is to reduce the level of light spill. Diagrams of the 12m high lighting columns have been submitted.
- The applicants are fully allowed to apply for flood lights as a standalone application.
- The arena is located c30m from appellants property and a further 15m from their dwelling. The applicants are unclear how lighting could have any impact on privacy.
- It is clear from the Donnachadh O'Brien Consulting Engineers Report that there will be no light spill at the appellants property. The lights spill on the neighbouring property to the north affects agricultural buildings not the dwelling.
- The examples shown in the report were illustrative only. The proposed lighting was assessed as a domestic facility and the findings of the report are that it will not have a material impact on any dwellings in the vicinity.
- Reference is made to a previous Board decision (ABP Ref:PL09.304940) where the Board considered that *the impact of the proposed floodlighting*

while in use would not result in an unacceptable impact on residential amenity, by reason of its directional only design and heights which would result in focused light spill.

- The purpose of the proposed floodlighting is to allow the applicants daughter to avail of coaching and exercise during the winter months. It is not a riding school.
- As only two persons are involved (mother and daughter), the amount of time involved is limited and it is very difficult to see how such a modest use could have such a detrimental impact on the amenity of the appellants.
- The horses need exercise. School times and shorter evening hours in the winter make it almost impossible.
- The lighting poles are slimline structures and the fixtures to same are very small. They do not consider the visual impact of these structures to be such that it would have a material visual impact particularly having regard to the separation distance and new tree line planting
- There is no distinguishment between 'commercial' or 'domestic' type lighting. The floodlight proposed is the most suitable type for a domestic arena. There will be no light spill and the 10pm closing time for the flood lights is not unreasonable.
- The applicants feel that the issues raised by the appellant regarding the location of the shed, barn and arena were addressed under their previous application KCC Reg. Ref: 20/874. This application was supported by the appellants.
- The applicants are surprised that the planting carried out along the boundary with the appellants property has been raised as an issue.
- The 'berm' consists of topsoil removed from the exercise area. It is temporary in nature, and it is the intention of the applicant to remove same in due course.
- The applicants refute the allegations made regarding their bona fides. Development taken place under KCC Reg. Ref: 19/597 and 20/874 has been done in compliance with the respective planning permissions.

6.3. Planning Authority Response

- Kildare County council notes the contents of the appeal however they consider that the matters raised in the submission are largely identical to those raised in the original planning application which have been addressed.
- They have no further comments or observations to make and that request that the Board uphold the decision to grant permission subject to the conditions set out in the notification of decision issued on the 25th November 2021.

6.4. Observations

- None

6.5. Further Responses

A further submission from the appellants in response to the applicants' comments on the grounds of appeal is summarised below:

- The applicant's response to the further information request effectively doubled the height of the lighting columns proposed. This is a material change to the development. The fact that the development was not readvertised is a very significant issue that the Board cannot ignore.
- The Board has no vires to consider the revisions made at further information stage and resubmitted in response to this appeal as they were not readvertised. The only option available to the Board is to make a determination on the application as submitted in the first instance. The Board has no choice but to refuse permission as it does not have any evidence that it can consider relating to the effects of the original proposed development.
- If the Board are to grant permission for the revised scheme, the appellants intend to judicially review the Boards decision on the basis of its lack of vires to consider the further information.
- The applicant's response to the further information request did not include any drawings of the revised design of the flood lighting columns and it is not open to the applicants to attempt to remedy this error.

- The drawings submitted are not compliant with planning regulations as they do not show the overall height of the floodlights
- The planning authority was unaware of the change in height of the lighting columns.
- The separation distance of 30m is not a significant distance in a rural context particularly when it comes to light pollution.
- The reports submitted in support of the application are based on the Chartered Institute of Building Services Engineers Lighting Guide 4: sports lighting, in particular Table 3 which defines guidelines for light nuisance and intrusion levels on adjoining dwellings / premises or potential dwellings / premises and specifically windows. The appellants consider it inappropriate to utilise the UK based CIBSE standards to assess light pollution in Ireland as the UK is generally darker than Ireland.
- Table 2 of the Guidelines describes 4 different environmental zones (E0-E4). E0-E2 being the most sensitive. The reports submitted describe the location of the proposed development as E2 rural. The appellants however consider that the development should be assessed under the more sensitive E1 zone.
- The impact of light spillage on the wider area is not considered particularly the adjoining farmyard to the north
- The development permitted under ABP Ref: PL09.304940 is not a relevant precedent.
- The need for the proposed floodlights is questionable based on the limited usage proposed (c6 hours per week). This is a luxury.
- The appellants request that in the event the Board decide to grant permission they include a condition limiting the use of the flood lights to 2 hours per day and that the lights are not used past 7pm.
- The floodlights are entirely out of character with the rural area and will have a significant visual impact
- There are inconsistencies Horizontal Lx diagrams in the Musco Report drawing into question the accuracy of the predicted impacts

- Planting is well in excess of that shown on the landscape compliance drawings for the permitted development. Plants will grow to an excessive height and block light.
- The applicant's intention to remove the 'berm' does not deal with the unauthorised nature of the bund and points towards their bona fides and attitude towards the planning laws and regulations.

7.0 Assessment

7.1. The main issues in this appeal are:

- Procedural Issues
- Lighting Design and Visual Impact
- Impact on Residential Amenity
- Bona fides of applicants
- Appropriate Assessment

7.2. Procedural Issues

7.2.1. Planning permission has been sought for the erection of new floodlighting and associated siteworks at Rose Cottage, Turnings, Straffan, Co. Kildare. The proposed flooding lighting is to serve the existing equestrian sand arena located within the curtilage of the applicant's family home.

7.2.2. The scheme as originally presented to the planning authority comprised proposals for the provision of 4no. floodlights each at a height of 6.2m. Following their initial assessment, the planning authority deemed that further information was required to ensure that the scheme would not become a source of light pollution.

7.2.3. The applicant's response to the further information request includes a lighting design and light spill analysis which outlines proposals for a lighting scheme of 4no floodlights with a column height of 12m, c6m higher than the column height outlined in the original application. I note that the appellants are of the opinion, as set out in

the grounds of appeal, that the increased column height represents a material change to the development originally proposed and, that as such the further information received by the planning authority on the 3rd November 2021 should have been deemed to contain significant additional data in accordance with Article 35 of the Planning and Development Regulations 2001(as amended). They contend that as the development was not readvertised, the Board has no 'vires' to consider the revisions made at further information stage and that any determination should be based on the application as submitted in the first instance.

7.2.4. With regard to the above, I refer to the Board to Section 5.9 of the Development Management Guidelines which in respect of 'significant additional data', states that *the question of 'significant additional data' can only be determined by the planning authority on an individual basis in each case using professional judgement and having regard to the particular circumstances, but the impact on the environment and / or the effects on third parties will always be material considerations.*

7.2.5. In this case, I note from the report of the case planner (November 2021), that the planning authority determined that the further information received on the 3rd November 2021 was not significant. While it is the contention of the appellants that that planning authority was unaware of the change in the height of the lighting columns, I am not satisfied that there is any evidence to support this claim. Furthermore, I note that the planning authority, in their response to the grounds of appeal, raised no issue or objection to the height of the flood lighting and that they requested the Board to uphold their decision to grant permission subject to the conditions.

7.2.6. While I note that the further information received by the planning authority on the 3rd November 2021 did not include drawings of the revised flood lighting columns I am satisfied that the drawings submitted by the applicants as part of their response to the grounds of appeal, adequately address this issue. The drawings submitted detail proposals for 4no Musco 12.2m light structure system poles and are in my opinion adequate for assessment purposes.

7.2.7. The following assessment represents by de novo consideration of all planning issues material to the proposed development.

7.3. Lighting Design and Visual Impact

7.3.1. A lighting design and light spill analysis for the proposed floodlighting was submitted in response to the further information request. The report outlines proposals for a scheme of 4no floodlights with a column height of 12m (12.2m with luminaire). The increased column height from c6m to c12m is justified on the basis that it allows for the aiming angle of the flood light onto the pitch surface at an appropriate angle to minimise glare and spill light while also facilitating even light distribution.

7.3.2. In accordance with the details submitted in the report the objective of the lighting design was to produce a system compliant with Chartered Institute of Building Services Engineers: Lighting Guide 4: Sports Lighting (CIBSE LG4), in particular, the recommendations for light overspill and trespass as set out in Table 3 of the guidelines.

7.3.3. Table 3 of the CIBSE Guidelines refers to four different Environmental Zones, classified E1 to E4, E1 being the most sensitive. The report identifies the proposed development site as being located within an E2 Rural Zone. However, it is the contention of the appellants that the area should have been identified as the more sensitive E1 Dark landscape Zone. Following consideration of this issue I am satisfied, having regard to the location of the proposed development in a relatively well populated rural area outside of any protected designation, that the E2 classification is appropriate in this instance.

7.3.4. Table 3 of the CIBSE Guidelines allows for a maximum light trespass into windows of 5 lux within the E2 Rural Zone. The report indicates no lighting spill at the appellants property east of the arena and no light spill to the other nearby residential property to the northeast. A light spill of 2.62 lux to the neighbouring agricultural buildings to the north of the sand arena has been identified however I note that this is well below the CIBSE threshold of 5 lux.

7.3.5. Based on the information provided within the report I am satisfied that the proposed floodlighting scheme (as amended) would not have a significant negative impact on the amenities of adjoining properties by way of light pollution.

7.3.6. In terms of visual impact, I am satisfied that, notwithstanding the height of the proposed floodlights at 12m, the proposed structures would not appear incongruous within this established equine setting and that they would not, due to their slender design and location, seriously detract from the rural character or visual amenities of the area.

7.4. Impact on Residential Amenity

7.4.1. As previously established, I am satisfied that the proposed floodlighting scheme would not give rise to any undue impact on the amenities of adjoining properties by way of light pollution.

7.4.2. While I acknowledge that the provision of floodlighting as proposed would extend the operational period of the existing sand arena, particularly during the winter months, I consider that the use of the facility as proposed i.e., as a private facility used by the occupants of the site and not for commercial purposes and, its use within the proposed hours of operation (7am to 10pm), would not give rise to significant levels of noise or disturbance beyond what would normally be considered acceptable within a rural setting.

7.5. Bona Fides of the Applicants

7.5.1. I note that the appellants are concerned that the applicants will not comply with the conditions attached to a grant of planning permission, citing an alleged history of non-compliance / unauthorised development. I note however that the matter of planning enforcement falls under the jurisdiction of the planning authority and therefore I do not consider that the Board is in a position to draw any conclusions in relation to the matters raised.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, no Appropriate Assessment issues arise and, it is not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site

8.0 Recommendation

- 8.1. I recommend that permission for this development be granted subject to condition.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, the existing development on site, and the character of the area, it is considered that subject to compliance with the conditions attached, the proposed development would be an acceptable form of development that would not seriously injure the residential or visual amenities of the area and would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be 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 3rd day of November 2021 and by the further plans and particulars received by An Bord Pleanála on the 27th January 2022 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 development and the development shall be 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 floodlights shall be operated in conjunction with the ancillary use of the domestic site. The floodlights shall not be used for any commercial purpose.</p> <p>Reason: In the interests of clarity and to regulate the use of the development in the interest of proper planning and sustainable development</p>
3.	<p>The floodlights shall not operate between 22:00 to 07:00 on any day</p> <p>Reason: In the interest of residential amenity and protecting biodiversity</p>
4.	<p>The developer shall comply with all future site lighting requirements of the planning authority in relation to adjusting the lights by re-aiming, the addition of louvres and shields and / dimming. This is to deal with any glare issues which may arise for road users and for adjacent lands which may only become apparent when the installation has commenced</p> <p>Reason; in the interest of proper planning and sustainable development</p>

Lucy Roche
 Planning Inspector

28th September 2022