



An  
Bord  
Pleanála

## Inspector's Report ABP-312777-22.

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<b>Development</b>	Retain an existing storage shed and hard standing area for the storage of machinery for agricultural contracting services as constructed, including all associated site works.
<b>Location</b>	Killegane, Castleisland, County Kerry.
<b>Planning Authority</b>	Kerry County Council.
<b>Planning Authority Reg. Ref.</b>	21/432.
<b>Applicant(s)</b>	James McEllistrim.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	James McEllistrim.
<b>Observer(s)</b>	Danny Murphy.
<b>Date of Site Inspection</b>	23 <sup>rd</sup> June 2022.
<b>Inspector</b>	A. Considine.

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## 1.0 Site Location and Description

- 1.1. The subject site lies approximately 1km to the south of the town of Castleisland, and is accessed directly off the R577, the Ballydesmond Road, within a 50kph zone. The site lies to the rear of two existing, single storey residential properties and has a shared vehicular access with the house to the north. The access is located between the two houses. The site lies in a backland location in a ribbon of residential development on this regional road extending south from the town.
- 1.2. The 6m wide site entrance extends to approximately 52m from the public road where the site opens up and includes the areas to the rear of the two roadside houses. While the submitted plans show boundaries, there are none present on the site. On the date of my site inspection, the shed was filled with a variety of farm machinery, including tractors and vans as well as other agricultural contractor equipment.
- 1.3. The Board will note that the overall site area is indicated as being 0.226ha. This area includes the access lane to the rear of the houses, as well as a grassed area to the north of the shed and the hard stand area, the subject of this retention application. I would note that the area of hard standing to be retained is indicated in the submitted planning application as 85.0m<sup>2</sup>, while the cover letter suggests the area is 200m<sup>2</sup>. The Board should note that the actual area of hard standing at this location is multiples of these figures (I estimate +800m<sup>2</sup>).

## 2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices to retain an existing storage shed and hard standing area for the storage of machinery for agricultural contracting services as constructed, including all associated site works, all at Killegane, Castleisland, County Kerry.
- 2.2. The application included a number of supporting documents including as follows;
  - Plans, particulars and completed planning application form,
  - Cover letter.
- 2.3. The Board will note that the initial application described the subject development at ‘Planning Retention to retain an existing storage shed and hard standing area

as constructed, including all associated ancillary site works at Killegane, Castleisland, County Kerry.

Following a request for further information, the description was amended to note the use of the site for the storage of machinery for agricultural contracting services. Revised site notices were provided.

- 2.4. The information submitted advises that the applicant built the storage shed and associated hard standing area to the rear of his parents' house. It was built in order to fit into the local landscape and all boundaries and trees were retained. It was presumed that if the floor area of the shed was under 200m<sup>2</sup>, and the associated hard standing area also under 200m<sup>2</sup>, he would not require planning permission. The cover letter advises that the applicant regrets his lack of knowledge and realises that planning permission should have been sought.
- 2.5. It is submitted that the nature of the services provided is on a small scale and is seasonal, confined to the months of May to October. The applicant provides a much-needed services to users of the Mart in Castleisland. The location of the site falls outside of the settlement boundary of the town and is therefore unzoned. Due to this and the dispersed nature of neighbouring property and the rural setting, it is submitted that the storage shed is in-keeping with the area. The applicant has retained mature hedging and chose material so as to not visually impact the rural nature of the area.
- 2.6. A further letter from the applicant submits that the shed is located to ensure security for the machinery and equipment as well as for health and safety reasons. It is further submitted that there is a safe access to the site as cars are slowing to the 50kph zone. It is submitted that the objection is personal as there is only one family involved and no other neighbours have raised concerns.
- 2.7. The development the subject of this retention comprises an open sided storage shed which has a stated floor area of 149m<sup>2</sup>. The structure rises to a maximum height of 4.6m to the front and has a sloping roof which runs from the front down towards the rear, where the height is noted at 3.7m. The building has a stated finished floor area of between +99.65m and +100m and is divided into three bays. The shed is finished in a grey cladding and is reflective of an agricultural building. The yard is indicated as having an area of 85m<sup>2</sup>.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to refuse planning permission for the development for the following stated reason:

1. The site of the proposed development is located on the out-skirts of Castleisland Town in a predominantly residential area. It is considered that the noise and disturbance generated by the proposed development would seriously injure the residential amenities of properties in the vicinity and would therefore, be contrary to the proper planning and sustainable development of the area.

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

#### **3.2.1. Planning Reports**

The initial Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submissions, planning history and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report.

On the basis of the information submitted, the Planning Officer required that the actual nature of the activity to be carried out on the site required to be clarified, given the 'commercial' nature of the development (The Board will note that the initial application sought the retention of a storage shed and hard standing area only) It is also noted that conflicting information was provided by the applicant in this regard. Further information was therefore sought in relation to this matter.

Following receipt of the response to the further information request, the Planning Officer concluded that the as the site is located on the edge of Castleisland, in close proximity to residential development, and having regard to the noise and disturbance generated by agricultural machinery and the hours such businesses operate, the application site is not appropriate for the development. The report concludes recommending that permission for the proposed development be refused. This

Planning Report formed the basis of the Planning Authority's decision to refuse permission.

### 3.2.2. Other Technical Reports

None

### 3.2.3. Prescribed Bodies

**Irish Water:** No objections

### 3.2.4. Third Party Submissions

There are 5 no. third-party objections noted on the PAs file from adjoining residents.

The issues raised as summarised as follows:

- The noise and constant activity carried out from the agri-contracting business and machinery is a source of great disturbance and frustration to all.
- The residents of the houses adjacent are forced to avoid being in their formerly quiet, and peaceful home.
- The impact on the wellbeing and mental health of residents is such that the disruption caused has taken a physical toll on the family unit.
- The machinery is coming and going in the evenings and at night-time so there is no let-up in the noise and there is a bright light emanating from the development.
- Power washing of vehicles and machinery has caused run-off leaking into adjacent land due to the lack of any storm water facilities at the site.
- The existing residents cannot use their back gardens for long periods of time due to the noise, smells and fumes from the machinery and slurry tankers.
- The building is used for commercial purposes as the applicant is an Agricultural Contractor and his name is on the machinery. It is not a storage shed ancillary to the use of the house.
- The access to the site is not appropriate for a commercial development and the turning movements create a traffic hazard and a danger to pedestrians, cyclists and car users.

- This is a residential area, and the commercial business is not appropriate. It operates 7 days a week from spring to autumn.
- The applicant removed part of the boundary ditch which had provided some privacy and a pipe has been placed through the boundary ditch onto the appellants property. It is unknown where this pipe originates.
- Enforcement communication from Kerry County Council has resulted in machinery being moved off site and there has been no noise and it is hoped that this will continue in the residential area.

One of the objectors includes a number of photographs

Following the submission of the response to the FI request, there were three further submissions from the objectors, who primarily restated their objections. In addition, the following issues were noted:

- The operation is not small scale and operates year-round, including weekends.
- Factual detail has been submitted.
- Contrary to the applicants' agents' comments, attempts were made to address the concerns with the application. The objectors were met with indifference, negativity and a total lack of compromise. One incident resulted in the Gardai being called.
- This is not a personal objection, and the families had lived side by side for 20 years without issue before this business was started without planning permission.
- The development has significantly impacted family life at the objectors' home.
- The applicant fails to refer to what the yard is used for and fails to refer to the treatment of surface water run-off or the servicing or washing of vehicles.
- The applicant does not refer to hours of operation of the facility and fails to understand the significance of the negative impact his proposal has on adjacent property owners.

- The applicant does not deal with incorporating appropriate facilities to ensure no hydro-carbons, oils or diesel enters the ground or where vehicles are serviced.
- The issue of the pipe into the neighbouring property has not been dealt with and no assessment of impacts has been carried out.
- It is suggested that as the site lies outside the Castleisland Local Area Plan that the proposed development should be acceptable on the basis that it is a farming area and not residential. This is not the case, and the site is located within a built-up area which is unsuitable for the enterprise he carries out.
- There is no reference in the plans to the subdivision of the shed for the area to be used ancillary to the house. On the date of site inspection, the shed was full of machinery, as was the yard.
- An email was submitted by a neighbour who the applicant has suggested has no issue with the development. This is not the case, and the objector does not want the business to go ahead at this location due to the impact on the residents.

#### 4.0 Planning History

There is a current Enforcement file open on the site as follows:

**Ref: 8391:** the paving of lands and the construction of a shed for use as an agricultural contracting business.

The following is the planning history associated with the site.

**PA ref: 07/3350:** Outline permission refused to John Kelliher for the construction of 3 detached dwelling houses with service road, site development services and ancillary development works. The reasons for refusal related to:

1. Over-development of the site
2. Contravention of the plan in terms of zoning
3. Access to the site.



## 5.0 Policy and Context

### 5.1. Development Plan

#### **Kerry County Development Plan 2015-2021**

The subject site lies outside the identified settlement boundary of Castleisland and is zoned for amenity purposes 'Rural General' in the Kerry County Development Plan. Section 3.3.2 of the Plan deals with Development in Amenity Areas and sets out the policies and objectives for the protection of the landscape.

Section 3.3.2.1 of the Plan deals with 'Rural General' and states that

These areas constitute the least sensitive landscapes throughout the County and from a visual impact point of view have the ability to absorb a moderate amount of development without significantly altering their character.

#### **The Killarney Municipal District Local Area Plan 2018-2024:**

The subject site lies outside the identified settlement boundary, and zoned land area, associated with the town of Castleisland. Castleisland is identified as occupying an important role as a Regional Town within the MD. The subject site lies to the rear of two houses in a ribbon of development which extends from Castleisland on the western side of the R577, Ballydesmond Road. The speed limit in this area is noted to be 50kph, with the 80kph zone located approximately 200m to the south of the site.

### 5.2. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) which is located approximately 4km to the north-east of the site. In addition, the following sites are located within 15km of the site:

- Lower River Shannon SAC (Site Code: 002165) – 8.8km to the north-east
- The Castlemaine Harbour SAC (Site Code: 000343) - 11.2km to the South.
- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365) – 12.7km to the south-east.

- Slieve Mish Mountains SAC (Site Code: 002185) – 12.9km to the west
- Ballyseedy Wood SAC (Site Code: 002112) – 13.1km to the west.
- Blackwater River (Cork/Waterford) SAC (Site Code: 002170) – 14.5km to the east.

### 5.3. EIA Screening

- 5.3.1. The subject appeal does not relate to a class of development which requires mandatory EIA.
- 5.3.2. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required. The proposed development is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.
- 5.3.3. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.
- 5.3.4. Having regard to:
- (a) the nature and scale of the development, and
  - (b) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that 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 first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed retention of an existing storage shed and hard standing area for the storage of machinery for agricultural contracting services as constructed, including all associated site works. The issues raised are summarised as follows:

- Kerry County Council issued an enforcement notice to remove the shed from the site while the retention application process was in place.
- Further information was sought, and it is understood that the applicant has 6 months to respond.
- It is submitted that the Council may not be giving a fair hearing by not allowing time to come to a conclusion on the planning application.
- The structure is a low size structure to store equipment from the elements and is no different to other structures on the neighbouring site to the north. The scale of the development would fall into an exempted development.
- The location of the site falls outside the settlement boundary of Castleisland. Due to the un-zoned land as well as the dispersed nature of neighbouring property and rural setting, it is submitted that the storage shed is in-keeping with the proper planning and sustainable development of the area.
- There are no visual impacts arising and the shed is located 80m from the nearest development.
- The structure has no activity in it only for storage and parking of some agricultural machinery after a day's work. There is little noise and disturbance to the residential properties in the local area.

The appeal includes a Noise Impact Assessment and a letter from the applicant.

The Noise Impact Assessment was prepared following the PAs decision to refuse planning permission in order to quantify the degree of noise emissions from the storage shed and to determine if it is imparting a significant noise emission impact on adjacent noise sensitive receptors. The report notes that the shed is used to store tractors and associated farm equipment and that the only noise source will be the starting up, turning off and ingress/egress of tractors.

A baseline survey was carried out over a two hour and 5-minute period on the 8<sup>th</sup> of February 2022 at two identified locations. The daytime measurement was selected, and no night-time measurements were required as the tractors will not operate at night-time. The assessment sets out the detail of the personnel and instruments used, as well as the procedure of the measurements. The baseline measurements range between 58-60dB L<sub>Aeq</sub> and 39 to 42dB L<sub>A90</sub>, and the primary noise source is traffic on the R577. The assessment was carried out with tractors started, exiting the shed and returning to the shed. The results are presented in Table 3 of the assessment, ranging between 62-66dB L<sub>Aeq</sub> and 53 to 59dB L<sub>A90</sub>.

Section 9 of the report presents the Noise Impact Assessment which concludes that given the relatively low noise levels, even in a worst-case condition of three tractors entering and exiting during the course of the day for a period of one minute each, it would only result in a total of 6 minutes of noise emissions, which in a 16-hour daytime period, is deemed negligible. It is concluded that the given the location of the houses on the R577, they are already exposed to a high ambient noise event environment. The report also notes that there is a similar tractor storage shed to the north of the subject site.

While the report concludes that there is no significant noise impact that would be expected to be imparted from the proposed development on any of the adjacent noise sensitive receptors, a number of mitigation measures are recommended. These include the restricting tractor start-ups etc to daytime periods as well as the provision of supplementary landscaping features along the eastern and southern boundary areas of the shed and hard standing areas. It is submitted that the shielding of noise producing areas with landscaping features visually provides a significant psychological benefit and reduction in the subjective perception of noise emissions.

The report concludes that with mitigation measures or not, the current levels of noise emissions from the tractor storage shed are insignificant and will have no significant noise impact on any of the identified adjacent noise sensitive receptors.

## 6.2. Planning Authority Response

None.

## 6.3. Observations

There is one observation noted from Mr. Daniel Murphy. The issues raised are summarised as follows:

- There have been numerous objections to Kerry County Council which are still valid.
- The noise impact assessment submitted is not considered impartial and it is submitted that the output of noise may have been limited or other equipment eliminated at the time of the very short survey.
- The noise which the observer has lived with occurs early in the morning, during the day and late at night, including weekends and includes works such as servicing the equipment, cleaning and washing the equipment.
- The statement that the shed is used exclusively for tractor / farm equipment storage purposes is not accurate.
- While the houses are located on the R577, the vehicles pass by and do not stop beside homes and remain ticking over with regular revving over long periods.
- The similar storage shed referred to is not used for an agricultural contracting business.
- This is not a small-scale business as suggested, and the shed is not used for storage only.
- The submitted reports have not considered the run-offs of the maintaining, servicing, washing and hosing of the equipment.

- The applicant claims to have taken care to retain mature hedging, landscaping, but evidence submitted showing the locating of a fuel tank at the boundary ditch.
- The terrible noise, disruption and associated environmental impact that comes with the type of machinery has had a massive impact on the observers' quality of life and will do for the rest of their lives if the development is permitted.

It is requested that permission be refused.

The observation includes a number of enclosures, including a report from Ger O'Keeffe Consulting Engineers. This report concludes that the location is not appropriate for the development.

#### **6.4. Further Responses**

None

### **7.0 Assessment**

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Impacts on Existing Residential Amenity
3. Other Issues
4. Appropriate Assessment

#### **7.1. Principle of the development**

- 7.1.1. The proposed development seeks to retain an existing storage shed and hard standing area for the storage of machinery for agricultural contracting services as constructed, including all associated site works, all at Killegane, Castleisland, County

Kerry. The subject site lies to the rear of two houses which are located within a ribbon of one-off houses on the R577, the Ballydesmond Road, which runs south from the centre of Castleisland. While the applicant suggests that the site is located within a rural area, I would note the proximity of the site to the town, as well as being within the 50kph speed limit.

- 7.1.2. The site is identified as lying outside Castleisland and in an area zoned “Rural General” in the LAP and the CDP. The Board will note that the site comprised a residential site up to the point that the subject shed was constructed.
- 7.1.3. I would note that there is a real lack of clarity with regard to the development, however. Of note, the area of the hard standing area, which is also the subject of this retention application, is significantly understated in the submitted application form in terms of area. In addition, I suggest that there is a real lack of clarity in terms of the use of the shed and the associated works which are carried out therein as part of the applicants’ business.
- 7.1.4. The applicant seeks to retain the shed, which is used as part of his agricultural contracting services business which he operates from the site. The shed was constructed without the benefit of planning permission, and the Board will note that there is a live enforcement notice affecting the site. In terms of the principle of the proposed development of a storage shed, I would have no great objections. I consider that the shed is located to the rear of the existing houses and is only visible via fleeting glances from the public road. The materials used in construction are not offensive or out of keeping with the surrounding area, and I do not consider that any significant visual impacts arise. That said, I do consider that there are matters in terms of impacts on existing residential amenity associated with the use of the shed which have not been appropriately considered or addressed.

## **7.2. Impacts on Existing Residential Amenity**

- 7.2.1. In terms of the proposed development, the Board will note that the applicant has suggested that the shed is used solely for the storage of agricultural machinery and equipment associated with his business. The third-party observers have raised significant residential amenity issues due to the operation of the business from the site, and in particular references the noise and disturbances associated with the

operation of the machinery, together with the maintenance of same which includes servicing and washing / cleaning after use.

7.2.2. While the applicant has indicated that the operation is seasonal, and that he is not a farmer with an additional landholding, he offers agricultural services to local farmers in the Castleisland and surrounding areas. The shed was constructed in order to provide security for his machinery and equipment, and it is suggested that it is a small-scale operation. The third-party observer would suggest otherwise and has submitted photographs depicting the activity at the site, and at various times of the day and night, and at various times during the year. A link to videos has also been provided.

7.2.3. The Board will note that on the date of my site inspection, there were three tractors and four pieces of other machinery on the site, with a van and a horsebox also noted. There was no activity at the site. In this regard, I would accept that there was no significant residential amenity impacts arising at that time. I also note that the appellant has had a Noise Impact Assessment carried out and submits that the findings of same are presented in terms of a worst-case scenario. The assessment concludes that the noise emission levels would be well below the criterion of 50dB LAeq,16hr, and are considered acceptable and negligible. That concluded, the report also provides details of noise mitigation measures which are recommended in respect of the storage shed as follows:

- Restriction of tractor start up / entering / exiting events to daytime periods only.
- Consideration for provision of additional landscaping measures along the eastern and southern boundaries.

7.2.4. While I would accept the bone fides of the submitted Noise Impact Assessment, I am inclined to agree with the third-party in terms of the scope of the assessment. The monitoring was undertaken over a short period, on one day, where there would appear to have been little or no activity on the site. I would acknowledge that machinery was used at the site in order to establish the appropriate noise emissions but it is clear that the third-party experience has been substantially more impactful over the past number of years.



7.2.5. Overall, I am satisfied that this area of Castleisland is essentially a low-density residential area and that the nature of the shed, the subject of this retention appeal, together with the use of same for the purposes of operating a commercial agricultural contracting service, is inappropriate to this locale. The development would give rise to significant residential amenity impacts due to noise and disturbance associated with the operation and movement of machinery and would therefore be contrary to the proper planning and sustainable development of the area.

### **7.3. Other Issues**

#### **7.3.1. Procedural Issues**

The Board will note that issues raised in the appeal regarding the enforcement proceedings. I would note that such matters are outside the remit of the Board.

#### **7.3.2. Surface Water Issues**

The Board will note the concerns of the third-party with regard to the washing and maintaining/servicing of the machinery on the site. I would fully concur with these concerns and would note that no details of any surface water drainage proposals have been provided. Given the proximity of the site to surface water drains, and the proposal to discharge to same, as well as the emissions issue highlighted by the third-party onto their property, should the Board be minded to grant permission in this instance, a full consideration of these matters will be required, with the applicant to submit full and clear details.

#### **7.3.3. Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

### **7.4. Appropriate Assessment**

The subject site is not located within any designated site and the closest Natura 2000 site is the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) which is located approximately 4km to the north-east of the site. There is no obvious hydrological connection between the site and

this Natura 2000 site. I am therefore satisfied that the proposed development would be unlikely to have any significant effect on the Conservation Objectives of this or any other European site in the wider area.

Having regard to the nature, scale and location of the proposal, the nature of the receiving environment, and the proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposal would not 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. It is recommended that the proposed retention of the shed be refused for the following stated reason.

## **9.0 Reasons and Considerations**

Having regard to the location of the development site on the outskirts of the town of Castleisland and in a predominantly low-density residential area, it is considered that the noise and disturbance generated by the proposed development, notwithstanding the mitigation measures proposed, that the proposed development would seriously injure the residential amenities of properties in the vicinity by reason of noise and disturbance. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

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A. Considine  
Planning Inspector  
18<sup>th</sup> July 2022