



An
Bord
Pleanála

Inspector's Report ABP-312858-22.

Development	Construction of a 298.6m ² agricultural stable building and all associated drainage, hard surfacing and site works to facilitate the development.
Location	Clonmult, Dungourney, Co. Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	21/6351.
Applicant(s)	Paul Kelleher.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party v Grant of permission
Appellant(s)	Annette Hegarty
Observer(s)	None.
Date of Site Inspection	22/09/2022.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located in a rural area, approximately 1km to the north of Clonmult, Co. Cork. The site is located within a lightly populated area with a number of farms and one-off houses located along the local road network. The subject site lies to the west (rear) of an existing house which fronts onto the local road. There is one other house immediately to the north of the subject site and the landholding associated with the subject site extends to the south, including two large agricultural fields. The Board will note that the applicants' landholding in the vicinity of the site extends to 7.62ha.
- 1.2. The site has a stated area of 3.51 hectares and works have commenced on the site for the construction of a sand arena. The access to the site was amended following the submission of a response to the further information request and the proposed provision of a new entrance and associated road have been omitted. The proposed stable block will now be accessed via the existing residential access associated with the applicants' home, and via an existing field gate located at the north western area of the residential site which provides access to the agricultural lands to the rear.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for the construction of a 298.6m² agricultural stable building and all associated drainage, hard surfacing and site works to facilitate the development, all at Clonmult, Dungourney, Co. Cork.
- 2.2. The application included plans, particulars and completed planning application form and a cover letter.
- 2.3. The submitted planning application advises that the proposed stable building is to be built for the purposes of keeping horses, ponies and associated feed and equipment. The applicant advises a keen interest in horse breeding and amateur horse-riding and is seeking permission for a suitable building to do so for private / family use. It is submitted that the sand arena which has commenced construction is exempt under Class 10 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001.

2.4. Following a request for further information, the applicant omitted the proposed access road to the south of the development and thus complies with site and press notices. With regard to the issue raised in terms of exempted development for the sand arena, the applicant submits that the previously included access road was to the proposed complex and not the sand arena. The amended proposal will be accessed via the existing field entrance.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 4 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 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 and EIA commentary.

The Planning Report notes that the principle of the development is acceptable and that no visual impacts will arise. The report of the Environment officer is also noted. After considering the exempted development regulations, the PO submits that the sand arena would appear to contravene the exemption class as 'it is accessed directly off a public road'. It is further noted that the access road has not been referenced in the application which would require planning permission as the public road is greater than 4m in width. The report concludes that this comprises unauthorised development. The initial report recommends that further information be sought.

Following the submission of the response to the further information request, the PO accepted the omission of the proposed new access road and as such, that the sand

arena is compliant with 'exempted development' regulations and that the proposed new agricultural building can be considered on its own merits.

The Report concludes that proposed development is acceptable, and the Planning Officer recommends that permission be granted for the development, subject to 4 conditions. This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. Other Technical Reports

Environment Section: The report notes the development at the site and advises that the report will only deal with the housing of horses.

The report notes that the applicant owns 7.62ha of land and 6 horses. The proposed building will consist of a straw store, hay store, tack room, dung stead and 5 stable boxes. A soiled water tank of 11m³ capacity is proposed to collect runoff from the dung stead as well as other soiled washings.

The report concludes advising no objection subject to compliance with conditions.

Area Engineer: General report notes the main engineering issues relating to roads and transport, surface water, water supply and sewage disposal.

3.2.3. Prescribed Bodies

None.

3.2.4. Third Party Submissions

There is 1 no. third party objection/submission noted on the planning authority file. The issues raised are summarised as follows:

- The proposed sand arena and building is a significant change of the land.
- The sand arena should not be exempt due to the significant change of the land.
- Development of the sand arena commenced in August 2021 with an expansive area dug up and elevated. Concerns are raised that the overall height with proposed fencing etc will be well above 2m.

- The distance from the development to the objectors property is between 10-20m.
- The development is in breach of planning regulations.
- The applicant already has existing stables in the vicinity of their home.
- Further issues relating to access, health and safety, residential amenity issues associated with dust and noise, changes to boundary and impact on views from their home and devaluation of their property.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref: 13/4267): Permission granted to the current applicant for the construction of a house.

PA ref: 04/8485): Permission granted to the current appellant for the construction of a house on the adjacent site.

5.0 Policy and Context

5.1. Development Plan

5.1.1. The Cork County Development Plan 2022 – 2028, is the relevant policy document relating to the subject site. The site is located in the open countryside, in a rural area which is identified as being Under Strong Urban Influence. The site is also noted to be located with the Greater Cork Ring Strategic Planning Area.

5.1.2. Chapter 11 of the CDP deals with water management and the following sections of the CDP relate to agriculture:

- **CDP WM 11-6:** Protection from Agricultural Pollution.

It is an objective of the Development Plan to:

‘Protect the County’s waters from agricultural pollution in accordance with the Nitrates Directive (91/676/EEC) through the implementation of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017

(SI 605 of 2017) or any future revised / additional requirements and ensuring that all agricultural development shall comply with those Regulations.'

5.2. **Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) which is located approximately 10.3km to the north of the site. The Great Island Channel SAC (Site Code 001058) and the Cork Harbour SPA (Site Code: 004030) are located approximately 11km to the south of the site.

5.3. **EIA Screening**

Having regard to nature and scale of the development, there is no real likelihood of significant effects on the environment arising from the proposed development in terms of EIA. 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 against the decision of the Planning Authority to grant planning permission for the proposed development. The issues raised reflect those raised during the PAs assessment of the proposed development and are summarised as follows:

- The development is currently, and will, interfere with the appellants peaceful occupation of their residential dwelling.
- In 2021, the applicants land has been radically changed with the excavation, raising of the land at the rear of their home and to the south west of the appellants home and garden.
- An access route to has been developed along the boundary of the properties which will have an impact on the appellants in terms of privacy, health and safety.

- The applicants have a total of 7.62ha of land and there are better alternative, suitable areas to build the stables and sand arena which will have a lesser impact on neighbouring property, health and well-being.
- The appeal sets out the history of the works and interactions with the PA.
- Procedural issues are raised with regard to the receipt of the further information response.
- Issues raised regarding the assessment of the proposed development and the lack of construction management plan, road safety audit or risk assessment from a health and safety perspective. No environmental impact study has been done in regard to the infilling of the sand arena and no noise impact assessment has been considered.
- No information has been submitted regarding the running of the facility and it appears that the development is aimed towards establishing a commercial business.
- Visual impacts associated with the proposed development from appellants home and views of the surrounding landscape.

There are enclosures with the appeal, and it is asked that the Board refuse permission for the agricultural shed.

6.2. **Planning Authority Response**

The Planning Authority submitted a response to the third-party appeal noting that the relevant issues have been addressed in the technical reports submitted to the Board. No further comments to make.

6.3. **Observations**

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. Third Party Issues
3. Other Issues
4. Appropriate Assessment

7.1. Principle of the Development:

- 7.1.1. The subject site is located within the open countryside and the appeal before the Board seeks to construct an agricultural stable building and all associated drainage, hard surfacing and site works to facilitate the development at this rural location.
- 7.1.2. The Cork County Development Plan 2022 – 2028, is the relevant policy document relating to the subject site and I note the provisions of CDP Objective WM 11-6: Protection from Agricultural Pollution. It is an objective of the Development Plan to: 'Protect the County's waters from agricultural pollution in accordance with the Nitrates Directive (91/676/EEC) through the implementation of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017 (SI 605 of 2017) or any future revised / additional requirements and ensuring that all agricultural development shall comply with those Regulations.'
- 7.1.3. The European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2017 set out the requirements for storage of farm effluents and the minimum holding periods for storage of farm wastes. In Cork, the holding period required for the purposes of calculating waste storage facilities is 16 weeks. All agricultural developments must be designed and constructed in accordance with the Minimum Specifications as set out by the Department of Agriculture, Food and the Marine.

7.1.4. In the context of the proposed development, the Board will note that stable building has a floor area of 298.6m² and will provide for a straw store, hay store, tack room, dung stead and 5 stable boxes. A soiled water tank of 11m³ capacity is proposed to collect runoff from the dung stead as well as other soiled washings. No soiled yards are provided, and the shed will house the applicants 6 horses. The principle of the agricultural development at this location is considered acceptable.

7.2. **Third Party Issues**

7.2.1. The third party has raised a number of concerns in relation to the proposed development and in particular, the issue of impacts on existing residential amenity. The primary issues arising relate to the visual impacts, location of access route, health and safety issues, the lack of an EIA and concerns regarding the running of the facility and the potential for establishing a commercial business at the site.

Visual Impacts:

7.2.2. In terms of the works carried out at the site to date in relation to the creation of the sand arena, the Board will note that the levels of the site have been lowered in order to facilitate a level surface. While I would acknowledge that the works have somewhat changed the landscape, I would not consider that the visual impacts arising are significant given the rural and agricultural nature of same. With regard to the proposed stable building, I note that it is to be located approximately 75m from the appellants house, and at a significantly lower finished floor level. The proposed building will rise to a maximum height of 5.367m and has been designed as an agricultural building which would not be out of place in this rural environment. Having regard to the existing roadside boundaries, I am satisfied that the proposed development is unlikely to give rise to a visual impact from the public road.

7.2.3. With regard to the visual impacts from the appellants property, I note the submission that the development will impact views from their property of the surrounding landscape. I also acknowledge the photographs submitted to support this concern. In relation to the above, I would note that the existing boundary between the appellants site and the subject site, comprises hedgerow and trees, which in full bloom, would likely screen the proposed building. I would also acknowledge that the views referred to by the appellant are not a right in planning legislation. Having undertaken a site

inspection, I am generally satisfied that the development is acceptable in the context of visual impact.

Roads & Traffic:

7.2.4. The Board will note that the submission of the response to the further information request altered the intended access to the stable building. The original proposal was to provide a separated access located to the south of the applicants' residential site. However, as this element was not advertised as part of the proposed development and following a request for further information from the Planning Authority, this element was omitted.

7.2.5. The Board will note that the amended proposal provides that the proposed stable building will be accessed from the applicants residential site via an existing entrance. An access road base has been constructed along the site boundary which will provide access to the stable building and the sand arena. While I would acknowledge that there may be some disruption to neighbouring properties during the construction phase of the development, given the intended use of the building, for use by the family and the housing of their 6 horses, I am satisfied that there is no significant roads and traffic issues arising. Should the Board be so minded, a condition could be included with regard to the landscaping of the sites northern boundary which may mitigate against any potential noise impacts arising due to traffic accessing the stable building.

Health and Safety Issues:

7.2.6. The third-party appellant has raised concerns in terms of health and safety matters during the construction phase of the development and the use of the access road by heavy machinery and transportation of loads. Given the nominal scale of the proposed development, and acknowledging some potential disruption during the construction phase, I am satisfied that the ongoing operation / occupation of the building will not give rise to any significant traffic movements as to warrant a refusal of planning permission on health and safety grounds.

Lack of EIA:

7.2.7. Having regard to the nominal scale of the proposed development, together with the rural location and the intended use of the development for rural related purposes, I am satisfied that the need for EIA can be excluded.

Potential for Establishing a Commercial Business:

- 7.2.8. The third-party has raised concerns that the investment in the development may mean that it is not just for recreational use as described and may progress to a commercial development. It is further submitted that the applicant already uses existing stables on family land in the vicinity of the site and there is no indication that these existing facilities will be removed.
- 7.2.9. In terms of the above, I am satisfied that the subject application should be assessed based on the information provided. The applicant has indicated that the building will be used privately by the family for their 6 horses. There is no reason to doubt this submission. Should any change to this use arise, a further assessment would be required by the Planning Authority based on the proposals at that time. A condition should be included in any grant of planning permission restricting the use of the stables to that as detailed in the submitted planning application.

Conclusion:

- 7.2.10. While I acknowledge the submission of the third-party appellant, the subject site lies within a rural environment and the subject site has been long used for agricultural purposes. The proposed development of a stable building is considered to be an appropriate agricultural use within this context. I am satisfied that the principle of the proposed development is therefore fully acceptable. Having regard to the detail of the proposed development, and in consideration of the third-party concerns, I am satisfied that the proposed development is an acceptable form of development at this location and will not give rise to significant dis-amenity in the wider area.

7.3. Other Issues

7.3.1. Procedural Issues

The Board will note the location of the appellant has advised that they were not advised following the submission of the response to the further information request and therefore, could not comment on the content of same. I would accept that the change to the access to the stable building as per the amended plans submitted following the request for further information altered the potential impact of the

development on the third-party. I have addressed roads and traffic matters above as part of this report.

The Board may wish to consider this matter further.

7.3.2. **Noise Impact**

While I acknowledge the submission of the third-party appellant, I do not consider that the operation of the stables will give rise to any significant noise levels.

7.3.3. **Sand Arena**

The Board will note that the third party raises questions as to the status of the sand arena which has commenced construction on the site. It is submitted that the development does not accord with the Exempted Development Regulations. Further concerns are raised as to what will be included as part of the arena as well as the detail of the material used to construct the surface.

I note that the PA raised concerns in relation to the sand arena at further information stage and that the applicant submitted a response to the issues raised to the satisfaction of the PA. The matter of the sand arena is not included within the description of the development the subject of this appeal to the Board. As such, I would not propose to include an assessment on the merits or otherwise of same and would suggest that matters of unauthorised development, if such development exists, is a matter for the Planning Authority.

However, I would advise the Board that the proposed development of the stable building is not dependant upon the presence of the sand arena. Neither is the access to the stable building. As such, the proposed development does not relate to a structure or use which is unauthorised or that the proposed development would facilitate the consolidation or intensification of an unauthorised use. Having considered the PAs planning reports, I am satisfied that the PAs decision was arrived at following a logical and reasonable assessment of the development, which had full regard to the impacts of the development on adjacent properties.

7.3.4. **Development Contribution**

The Cork County Council Development Contribution Scheme sets out the nature of developments which will attract a contribution levy under the S48 scheme. The scheme advises that

Traditional farm buildings and polytunnel, glasshouse structures and mushroom production structures, excluding intensive developments as referred to in “other non-residential” category on Page 4 above.

As such, it would suggest that the subject development is not liable to pay development contribution, no condition to this effect should be included in any grant of planning permission.

7.4. **Appropriate Assessment**

- 7.4.1. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or ‘European’) sites.
- 7.4.2. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The site is not located within any designated site and the development the subject of this appeal is not directly connected with or necessary to the management of a European site.
- 7.4.3. The closest Natura 2000 site is the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) which is located approximately 10.3km to the north of the site. The Great Island Channel SAC (Site Code 001058) and the Cork Harbour SPA (Site Code: 004030) are located approximately 11km to the south of the site. The closest watercourse lies approximately 150m to the west of the site.
- 7.4.4. Having regard to the nominal scale of the proposed development, together with the separation distance to any Natura 2000 site and the lack of any physical or hydrological connection to same, overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination

with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the 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

- 8.1.1. Having regard to the rural location of the site, together with the pattern of development in the area and the provisions of the Cork County Development Plan 2022-2028, it is considered that, subject to the compliance with the conditions set out below, that the proposed agricultural stable building, would not seriously injure the general or residential amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1. 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 30th day of December 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 development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The total number of horses to be housed in the stable building shall not exceed 6.

Reason: In the interest of clarity and the proper planning and sustainable development of the area.

3. The development shall be solely used for the purposes of personal recreation and the keeping of personal horses. No commercial operation shall occur at the site without a specific grant of planning permission for such use.

Reason: In the interest of clarity and residential amenity.

4. All foul effluent and slurry generated by the proposed development shall be conveyed through properly constructed channels to the proposed and existing storage facilities and no effluent or slurry shall discharge or be allowed to discharge to any stream, river or watercourse, or to the public road.

Reason: In the interest of public health.

5. 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.

6. Slurry generated by the proposed development shall be disposed of by spreading on land, or by other means acceptable in writing to the planning authority. The location, rate and time of spreading (including prohibited times for spreading) and the buffer zones to be applied shall be in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) (Amendment) Regulations, 2017, as amended.

Reason: To ensure the satisfactory disposal of waste material, in the interest of amenity, public health and to prevent pollution of watercourses.

A. Considine
Planning Inspector
16/11/2022