



An
Bord
Pleanála

Inspector's Report

ABP-313115-22

Development	Retention of foundations and concrete walls of farmyard.
Location	Dunabrattin, Annestown, Co. Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	211229
Applicant(s)	Michael Kavanagh
Type of Application	Permission for Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Peter Kavanagh & Eilis Magee
Observer(s)	None
Date of Site Inspection	24 th April 2023
Inspector	Una O'Neill

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1.0 Site Location and Description

- 1.1. The subject site is located in the coastal rural area of Dunabrattin in Co. Waterford, c. 4km southeast of the village of Kill and c.3.5km west of the village of Annestown. The site is accessed via a private laneway off the R675.
- 1.2. The area subject of this appeal is located to the northern end of an existing farmyard (1ha in area) related to a dairy farm. The gross floor area of the structure to be retained is stated to be 230sqm and has walls on three sides, being open to the farmyard on the southern elevation, with no roof.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Retention of foundations and concrete walls.
- 2.2. The floor area of the foundations area to be retained is stated to be 230sqm, with the height of the walls to be retained c. 2.3m-2.7m (varying depending on levels). I note the measurements given on the drawings do not correlate when measured against the scale given.

3.0 Planning Authority Decision

3.1. Decision

Permission GRANTED on 24th February 2022, subject to 3 conditions, including the following:

C1(b): Existing steel poles within the site are to be removed or cut back to match the height of the concrete walls.

C2: Agricultural hard stand area shall not be used for the housing of animals or as a dungstead storage.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority. The following is noted from the PA's report:

- The PA reports states the site has the capacity to accommodate the structure as built having regard to its modest height.
- It is stated that the structure is akin to an agricultural hardstand area enclosed on three sides, as such it creates a distinction and divide between the two neighbouring properties and land uses. It is stated that it would not be detrimental to the residential amenity of the neighbouring property owner while also having regard to the existing farm buildings in the vicinity.
- Condition required to ensure that the structure is not used for housing of livestock or a dungstead.
- It is stated that the steel poles, which are not indicated on the drawings for retention, should be removed or cut back to no higher than the elevational wall.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Two observations were received from the adjoining property owner. The issues raised are largely as set out in the grounds of appeal (see Section 6 hereunder).

4.0 Planning History

011464 – Permission granted to Michael and Catherine Kavanagh for a bungalow dwelling and treatment system.

11/379 – Permission granted to Peter Kavanagh for material alteration to PD 10/399 to renovate and extend existing house.

13/280 – Permission granted to Michael Kavanagh to construct a milking parlour.

20/504 – Retention permission REFUSED for the erection of columns, rafters, foundations and concrete walls for a farm building, an extension to an existing building (previously used as a miking parlour), and to construct a farm building to house calves.

Reason: Having regard to the scale and mass of the proposed development and its close proximity to the adjacent dwelling, it is considered that the development would result in an overbearing structure which would adversely impact the residential amenities of the adjacent dwellings and would result in the devaluation of this property. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Waterford City and County Development Plan 2022-2028

Volume 1; Chapter 2 Spatial Vision and Core Strategy

- Zoning – White Lands - These lands relate to all areas outside zoned and/or designated settlement. These lands are chiefly in agricultural use, and may contain some isolated development. Such lands are not currently zoned under any land use classification
- Table 2.2 Settlement Hierarchy and Typology – Kill is identified as a Class 4B Rural Village and Annestown is identified as a Class 5 Rural Nodes.
- **Chapter 10** – Landscape, Coast/Marine and Blue Green Infrastructure
 - **Policy L 02 Protecting our Landscape and Seascape** - We will protect the landscape and natural assets of the County by ensuring that proposed developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area and ensuring that such proposals are not unduly visually obtrusive in the landscape, in particular, in or adjacent to the uplands, along river corridors, coastal or other distinctive landscape character units.

- **Policy C&M 05 Scenic Coastal Area** - To protect the scenic value of Waterford's Coastal Zone including landward and seaward views and continuous views along the coastline and manage development so it will not materially detract from the visual amenity of the coast
- **Volume 2 – Development Management Standards; Section 6 Rural Development**
 - In visually sensitive areas, the Planning Authority will require that:

Development Management DM32:

 - Agricultural buildings/ structures be sited as unobtrusively as possible, and
 - The design, scale, siting and layout of agricultural buildings should respect, and where possible, enhance the rural environment.
 - Appropriate materials and colours are used. The use of dark colours, notably, dark green/reds and greys are most suitable for farm buildings.
 - The planting of shelter belts will be required to screen large scale sheds and structures.
 - Buildings should generally be located a minimum of 100metres from the nearest dwelling other than the applicants dwelling.
 - The Council will generally seek to cluster agricultural buildings and structures together, and siting to assimilate effectively into the landscape.
 - Any proposals for farmyard developments must make provision for runoff, and where there is a danger of groundwater or surface water contamination, the Council will require appropriate treatment of runoff. The Council shall have regard to the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2009 (S.I 101 of 2009) in relation to acceptable agricultural practice standards.
- **Appendix 8 – Landscape and Seascape Character Assessment**
 - Scenic Route 14 - From Ballyvoyle Head east on the R675 to the junction with the R677. Continuing south along the R675 to Bunmahon, east via Kilmurrin and Annestown and Northeast to Fennor. East onto Tramore and north to Waterford City; and.

- Coastal Landscape Character Type – rated as ‘Most Sensitive Area’.
- Sensitivity Class: Most Sensitive to Change.

5.2. Natural Heritage Designations

The Mid-Waterford Coast Special Protection Area (Site Code: 004193) is located 79m west of the appeal site.

The Ballyvoyle Head to Tramore Proposed Natural Heritage Areas is located c. 426m to the west.

5.3. EIA Screening

The proposed development is not of a class for the purpose of EIA.

6.0 The Appeal

6.1. Grounds of Appeal

One appeal has been lodged by the owner and occupier of the residential property to the north/northeast of the development. The issues raised in the grounds of appeal are summarised as follows:

- The structure was built without permission and was intended as a shed.
- The structure is the subject of enforcement. This notice has not been complied with. A small percentage of the building was removed (columns, rafters, purlins – photographs attached). Two columns were not removed, implying proposal to progress it in the future as a shed. As of March 2022, 12 months have passed since enforcement notice was served.
- The walls far exceed what is necessary to maintain a safe and secure farmyard. The walls are 18m long and 20m wide, ranging in height from 2.5-4.5m. The walls are no less than 3m from the boundary to the garden of appellants house, blocking light and are 14m from the front of the house.
- Work continued after a warning letter was issued.

- The walls block access to a legal right of way and are not on the boundary line between the two properties.
- Enjoyment of home has been undermined.
- Development devalues neighbours home.
- The walls are not in keeping with current old buildings and their height and placement are unsightly.
- The walls are unsightly, overbearing and dominate views from appellant's property.
- Concerned that current application a stepping stone to future development and housing of livestock which would result in noise, smell and activity.
- Walls do not act as a boundary to ensure a safe and secure farmyard as stated by applicant, they are not on the boundary line.
- The entire Waterford coastline is classed as visually vulnerable and as such even exempted buildings are de-exempted. No buildings, especially those classed as unauthorised, should be allowed to remain in place. This was not referred to in planners report.

6.2. Applicant Response

None.

6.3. Planning Authority Response

None.

7.0 Assessment

Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Design & Impact on Visual Amenity

- Residential Amenity of Neighbouring Property
- Appropriate Assessment

7.1. Design and Impact on Visual Amenity

- 7.1.1. The development proposal is to retain concrete foundations and three reinforced concrete walls (2.4m-2.7m high, depending on levels) around the foundations. As per the planning history in relation to this site, the foundations and walls were originally intended to be utilised in the construction of a calf shed, for which retention permission was ultimately refused. The rafters of the unauthorised structure and some columns were removed, however, it is now proposed to retain the foundations and existing walls around the foundations rather than remove them. The development descriptions indicates the proposed retention is required 'in order to maintain a safe, secure farmyard'.
- 7.1.2. I note the site is visible from the R675, which is designated in the operative development plan as a scenic route (Scenic Route 14) and is within the 'Coastal Landscape Character Type', which is rated as 'Most Sensitive Area'.
- 7.1.3. The structure to be retained, while visible from the R675, is low level and fits in with the surrounding area given the context of its location within an existing farmyard adjoining an existing agricultural shed, therefore I do not consider this structure is visually obtrusive from the wider area. However, it is clear that within the confines of the farmyard, it is an unfinished structure and it does not, as per policy DM32, enhance the rural environment at this location. Furthermore, the proposed use within the existing farmyard setting is unclear. I discuss this issue further hereunder with regard to residential amenity.

7.2. Residential Amenity

- 7.2.1. Policy DM32 (see Section 5 above) states agricultural buildings/structures should be sited as unobtrusively as possible and buildings should generally be located a minimum of 100m from the nearest dwellings other than the applicant's dwelling.
- 7.2.2. The third party raises concerns in relation to the visual impact of the development and the impact on their residential amenity given its location and scale.

- 7.2.3. The foundations and walls proposed for retention are at and along the southeastern corner of the neighbouring property and the northern walls of the structure are c.2.6m-2.8m from the northern boundary of the farm. The structure for retention is c.14m at its closest point with the neighbouring dwelling. The southwest boundary of the neighbouring dwelling with the farm comprises a low wall and a wooden gate. The southern boundary of the property is bounded by a now disused milking parlour, which from the planning history is stated to be currently used for storing calves over short periods of time. A new milking parlour was in the past constructed further to the south of the existing shed.
- 7.2.4. I note the neighbouring dwelling was within the original farm holding at one point in time, however, it is now in separate ownership and separate to the operations of the farm. It is indicated in the documentation submitted that the dwelling is occupied by a brother of the farmer of the lands subject of this appeal. While it is not ideal to have a separate residential property in such close proximity to an operational farm, it is nonetheless there, and it is therefore appropriate to consider the residential amenity of the occupants of the dwelling alongside the operational requirements of the farm.
- 7.2.5. While relatively low in scale given ground level differences and given the structure was never completed for its original purpose as a shed, the proposal has the appearance of an unfinished structure and is clearly visible from the neighbouring residential dwelling and its associated yard area, being positioned at and close to the shared boundary between the properties and within 14m of the neighbouring dwelling. Given the proximity of the structure for retention to its boundary, the proximity to the neighbouring dwelling, and given the unfinished appearance of the structure, the proposal in my opinion detracts from the visual and residential amenity of the neighbouring property when viewed from that property. I do not consider the proposal provides for an appropriate divide between the two land uses as suggested by the PA. Furthermore the proposed use of this area to be retained in regard to the functioning of the farm is unclear and, given the end use is unclear, its ultimate impact on the neighbouring property is unclear. The structure, in my opinion, should not be retained in the interests of visual and residential amenity.

8.0 Appropriate Assessment - Screening

8.1 Compliance with Article 6(3) of the Habitats Directive

- 8.1.1. **The requirements of Article 6(3)** as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

8.2 Background on the Application

- 8.2.1. A screening report for Appropriate Assessment was not submitted with this application/ appeal case. Therefore, this screening determination has been carried out *de-novo*.
- 8.2.2. The PA has undertaken a screening exercise. It is noted that the site is within 1km of a SPA. It is concluded, having regard to the location of the site, nature of the development, and intervening distance, that no appropriate assessment issues arise.
- 8.2.3. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

8.3 Screening for Appropriate Assessment- Test of likely significant effects

- 8.3.1. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 8.3.2. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

8.4 Brief description of the development

- 8.4.1. In summary, the development comprises:

- Retention of foundations and walls, within an area of approx. 230sqm.

8.4.2. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Habitat disturbance /species disturbance

8.5. European Sites

8.5.1. The development site is located 79m east of a European site, namely the Mid-Waterford Coast SPA (004193). I consider that this SPA is the only European site within a possible zone of influence of the proposed development and information in relation to this site is presented in the table below.

8.5.2. Having regard to the distances to other European sites and the absence of any ecological or hydrological links between other European sites and the appeal site, I do not consider any other European site is within this development's zone of influence.

Table 1: Summary Table of European Sites within a possible zone of influence of the proposed development

European Site (code)	List of QIs/SCIs	Distance from proposed development	Connections (source, pathway, receptor)	Considered further in screening (Y/N)
MidWaterford Coast SPA (004193)	Cormorant [A017] Peregrine [A103] Herring Gull [A184] Chough [A346]	Immediately adjacent	Immediately adjacent	Y

8.6. Identification of likely effects

- 8.6.1. I note the works subject of this application are on a part of land within an existing working farmyard. I note no works relate to the area within the boundary of the SPA.
- 8.6.2. Having regard to the existing operations of the farmyard, the existing habitat within the farmyard, the location of the site relative to the SPA and its associated bird species, and the scale and nature of the development proposed for retention, I do not consider habitat disturbance /species disturbance issues arise.
- 8.6.3. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

8.7. Screening Determination

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site No. 004193 (Mid-Waterford Coast SPA), or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Recommendation

- 9.1. It is recommended that permission is refused for the following reasons and considerations.

10.0 Reasons and Considerations

Having regard to the provisions of Waterford City and County Development Plan 2022-2028, in particular Policy DM32, the location of the development relative to the neighbouring dwelling, and having regard to the appearance of the structure and its unfinished form, the proposal would result in a discordant feature in the rural environment and would seriously injure the visual and residential amenity of property in the vicinity and would therefore be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Una O'Neill
Senior Planning Inspector

4th May 2023