



An
Bord
Pleanála

Inspector's Report

ABP-313518-22

Development	Retention permission for a slatted shed, silage base and ancillary site works and permission to construct a cattle crush at:
Location	Camlagh, Taughmaconnell, Ballinasloe, Co. Roscommon.
Planning Authority	Roscommon County Council
Planning Authority Reg. Ref.	21421
Applicant(s)	John Kelly.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Observer(s)	None.
Date of Site Inspection	30 th September 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located in the townland of Camlagh, in a rural part of Roscommon c.10km north of Ballinasloe. It consists of a farmyard complex that is located on the east side of the R357.
- 1.2. The farmyard contains a large, pitched roof shed and yard area adjacent to the R357, with a slatted shed and silage base (the subject of this application) to the rear (north and east). The circulation area between sheds comprises a mix of concreted and hard surfaced areas. There is also a partially completed extension of the slatted shed to its south, which at the time of inspection had advanced to the stage of construction of the underground holding tank and slatted floor.
- 1.3. The farmyard is elevated above adjoining farmland to the east and its east boundary is largely open.
- 1.4. There is scattered rural housing in the area, including a bungalow occupied by the applicant to the south of the farmyard, and a bungalow to the north, adjacent to the silage base.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises permission to retain a slatted shed, silage base and ancillary site works, together with permission to build a cattle crush.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused permission on 12th April 2022 for one reason as follows: -

The change of use from commercial warehouses to agricultural buildings does not constitute exempted development and is therefore unauthorised. The response received fails to provide any proposal in which the planning status of these structures may be regularised. The Planning Authority is precluded from granting permission for

the proposed development given the nature of the unauthorised development within the site as it would be premature to grant any permission to retain other associated agricultural structures while such matters remain unresolved. The proposed development would set an unwarranted precedent for similar proposals in which unauthorised development is present on site and would be contrary to the proper planning and orderly development of the area.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 16th September 2021, 15th March 2022 and 7th April 2022 have been provided. The first report states that agricultural development is supported, subject to normal planning considerations. The proposal is stated to be acceptable, subject to satisfactory additional information as requested by the Environment Department. An additional hand-written item, No. 4, was subsequently added to the AI request, which requests clarification of an existing shed on the site that did not form part of the application and which was identified as part of previous applications pertaining to the site as a commercial building.
- 3.2.2. The second report followed receipt of the AI response. It summarises and responds to the individual AI response items and recommends Clarification of AI regarding the shed on the site not forming part of the application.
- 3.2.3. The third report followed submission of the CAI response. It recommends that permission be refused for 1 No. reason, which is consistent with the Planning Authority's decision on the application.
- 3.2.4. Other Technical Reports

Environment Department reports dated 16th September 2021 and 15th March 2022 have been provided. The first report recommends AI regarding (1) a requirement for a nutrient management plan including details of farm stocking rates, (2) details of effluent/run-off management on the site including storage capacity and (3) details of all relevant structures on the site used for animal housing including storage tanks and effluent collection. The second report recommends conditions as part of a grant of permission.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. I did not encounter any recent planning records pertaining to the site.

5.0 Policy Context

5.1. Roscommon County Development Plan 2022-2028

5.1.1. The site is located in a rural, unzoned part of County Roscommon.

5.1.2. Section 5.4 relates to Agricultural Activity and Diversification. The following policy within the section is relevant to the appeal: -

RD 5.4: Support the agricultural sector and the development of agriculture to facilitate the development of sustainable agricultural activities.

5.1.3. Section 12.20 contains development management standards for agricultural development. It states that: -

- Large scale agricultural development and/or agriculture-related industry involving processing farm produce will generally be permitted subject to proper planning and sustainable development.
- Agricultural structures should be sited as unobtrusively as possible. Finishes and colours used should blend the development into its surroundings. The grouping of agricultural structures is encouraged in order to reduce their overall impact

5.2. Natural Heritage Designations

- 5.2.1. The subject site is not located within or adjacent to any designated European site, the closest such site is River Suck Callows SPA (Site Code 004097), which is approx. 3.4km west.
- 5.2.2. The River Suck Callows is also designated as a Natural Heritage Area (Site Code 004097).

5.3. EIA Screening

- 5.3.1. The proposed development is not a prescribed class for the purposes of EIA, as contained in Parts 1 and 2 of Schedule 5 of the Planning and Development Regulations 2001-2022.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows: -
- The Planning Authority took into consideration factors that were unrelated to the proposed development.
 - There are powers under other parts of the Act to conduct enquiries into planning compliance and the Planning Authority has acted outside its powers in assessing this application. Reference is made to McDowell v Roscommon Co. Co. (2004) in this context.
 - Claims by the Planning Authority that other buildings on the site are unauthorised are incorrect. The following grants of permission are referenced: -
 - 13486C/90
 - 13486D/91
 - 13486E/91
 - 13486F/91
 - 13486G/93

- The use of buildings for commercial purposes was ceased in 1993 and this was confirmed by the County Council, to confirm the cessation of the payment of commercial rates.
- The commercial use of the buildings was abandoned and in the intervening period they have been used for agriculture. Section 4(1)(a) of the Act is referenced.
- It is wrong to attempt to undertake enforcement by proxy, after a 30-year period.
- The Board will decide the application on its merits.

6.2. **Planning Authority Response**

6.2.1. None.

6.3. **Observations**

6.3.1. None.

6.4. **Prescribed Bodies**

- 6.4.1. An Taisce made a submission on 22nd June 2022, which advises of a potential hydrological connection between spread lands and the River Suck Callows SPA. The submission advises that screening for appropriate assessment should be undertaken.
- 6.4.2. The appeal was circulated to the Department of Housing, Local Government and Heritage and The Heritage Council but no responding submissions were received.

7.0 **Assessment**

- 7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:
- Principle of development,
 - Drainage, and
 - Appropriate assessment.

7.2. Principle of Development

- 7.2.1. The slatted shed to be retained is located adjacent to the east end of the farmyard complex, which is elevated above the level of the east-adjointing field. The shed is open-fronted and is used as animal housing. It measures 38.2m long x 4.4m wide x 5.6m high and it also contains an underground effluent holding tank. The tank is accessible from both ends of the shed. The proposed cattle crush is located at the northern end of the shed.
- 7.2.2. The silage base is located toward the north end of the farmyard complex. It comprises a 30.6m long x 13.7m wide concrete pad, which includes a drainage channel around the perimeter that drains into a holding tank. At the time of my inspection the north-eastern end of the pad was enclosed by a number of heavy-duty concrete wall blocks.
- 7.2.3. I would also advise the Board that I observed what appeared to be a partially completed extension of the slatted shed on my site visit, to its south. The extension has advanced to the stage of excavation and construction of the underground tank, together with the slatted concrete floor (construction activity appeared to have ceased at the time). It is not identified on the application drawings and is not mentioned in the application documents and the Board may therefore wish to clarify the applicant's intentions in this regard.
- 7.2.4. The Planning Authority's assessment of the application states that the development is acceptable but its decision to refuse permission states that it is precluded from granting permission for the development as there is unauthorised development within the site. The development in question is a large shed identified as 'existing agricultural shed' identified on site layout drawing No. 04. As part of the AI submission, the applicant provided elevation and floor plan drawings.
- 7.2.5. There is clearly a dispute over the planning status of the existing agricultural shed identified on site layout drawing No. 04, whereby the Planning Authority contends that it is unauthorised and the applicant argues to the contrary, stating that they have been used for agricultural purposes for nearly 30 years. The applicant also references the provisions of Section 4(1)(a) of the Act, in the context of an exempted development provision for the use of land and associated buildings for agriculture.

- 7.2.6. It is my view that this appeal is not the appropriate forum to establish whether or not the use of the shed is authorised. The Planning Authority is the competent authority with respect to planning enforcement and it has powers under the legislation to investigate claims of unauthorised development. I consider it would be unjustified to refuse permission for the development on this basis.
- 7.2.7. I am satisfied that the development is consistent with the development plan, which supports agricultural development subject to the principles of proper planning and sustainable development.

7.3. Drainage

- 7.3.1. Available Google Earth aerial photograph imagery indicates that the farmyard was extended eastward at some point between 2018 and 2020, in order to accommodate the slatted shed. This has had the effect of increasing the surface area of the yard and the area of winter animal housing provided within it.
- 7.3.2. In its initial submission on the application, the Planning Authority's Environment Section recommended that additional information be sought regarding a number of aspects of the application and the farm operation more generally. It recommended that a nutrient management plan should be provided, together with details of all structures used as animal housing and details of the collection and storage of run-off and effluent, which should be compliant with the requirements of the Good Agricultural Practice Regulations.
- 7.3.3. As part of the AI response, the applicant provided further details of drainage arrangements within the farmyard. Additional drawings were provided and a Nutrient Management Plan (NMP) was also provided, which included details of stocking rates and waste storage requirements and facilities within the farmyard. Within this, the applicant confirmed that the slatted shed is supported by an effluent holding tank (identified as slatted tank A) that runs under its length and that the silage base is shown on drawing No. 02 as draining to an effluent holding tank adjacent to its eastern end. The existing shed is stated to be supported by an effluent holding tank (identified as slatted tank B) that serves part of its area and the remaining areas that are used for animal housing are provided with straw beds. Table 2-1 of the NMP indicates that all animals over-winter on slats. The applicant states that storage

capacity accords with the requirements of the Good Agricultural Practice Regulations.

- 7.3.4. The Board will note that Table 2 of the Nutrient Management Plan, which contains details of waste storage tanks, refers to 'tank c' a further storage tank that provides 64m³ of storage. This tank is not identified on the drawings and I am unclear on its location. The Board may wish to clarify its location.
- 7.3.5. The *Good Agricultural Practice for Protection of Waters Regulations (2022)* requires that manure, soiled water and effluent should be collected and held in a manner that prevents run-off or seepage, directly or indirectly, into groundwaters or surface waters, prior to application to land or other treatment.
- 7.3.6. The NMP states that the tanks are adequate to contain all effluent and soiled water and that there is additional capacity in the system and there is nothing before me that would lead me to question this.
- 7.3.7. No details of manures produced on the site were provided but I note that the additional drawings provided identify that the existing shed contains areas of straw bed animal housing. Further, it appeared to me when on the site that the dungsted had been demolished.
- 7.3.8. In its subsequent report on the application, the Planning Authority's Environment Section recommended conditions to be attached to a grant of permission, controlling the collection, storage and disposal of surface and spoiled waters, effluent and manures. Should the Board decide to grant permission, I recommend these conditions are attached to its Order.

7.4. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.4.1. 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.

Background on the Application

7.4.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

Screening for Appropriate Assessment- Test of likely significant effects

7.4.3. 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).

7.4.4. 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.

Brief description of the development

7.4.5. The development is described at Section 2 of this Report. In summary, permission is sought for retention of a slatted shed, silage base and ancillary site works, together with permission to build a proposed cattle crush. Effluent associated with the slatted shed is stored in an associated underground effluent holding tank, to be spread on the land, and surface water from the silage base drains to a holding tank adjacent to its eastern side.

European Sites

7.4.6. The subject site is not located within or adjacent to any designated European Site. The closest such site is River Suck Callows SPA (Site Code 004097), which is approx. 3.4km west. Other sites within a potential zone of the include: -

- Castlesampson Esker SAC (Site Code 001625), c. 3.6km north-east.
- Killeglan Grassland SAC (Site Code 002214), c.4km north-west.

7.4.7. There are a large number of other European sites at distances between c.7km and 15km of the site. In view of the nature and scale of the development, I am satisfied that there is no possibility of significant effects arising other than for those sites closest to the subject site.

7.4.8. Summaries of the sites within the potential zone of influence are outlined in the table below.

European Site (code)	List of Qualifying interest /Special conservation Interest
<u>SPA</u>	
River Suck Callows SPA (Site Code 004097)	<ul style="list-style-type: none"> • Whooper Swan • Wigeon • Golden Plover • Lapwing • Greenland White-fronted Goose • Wetland and Waterbirds
<u>SAC</u>	
Castlesampson Esker SAC (Site Code 001625)	<ul style="list-style-type: none"> • Turloughs, • Semi-natural dry grasslands and scrubland facies on calcareous substrates
Killeglan Grassland SAC (Site Code 002214)	<ul style="list-style-type: none"> • Semi-natural dry grasslands and scrubland facies on calcareous substrates

Evaluation of potential effects

- 7.4.9. Available EPA drainage mapping¹ indicates that there is a drain c.130m east of the farm that drains westward to the Killeglen River. The Killeglen River flows into the River Suck and River Suck Callows SPA c.4.1km west of the site (measured in a direct line).
- 7.4.10. In view of the above, I am satisfied that there is no connectivity to Castlesampson Esker SAC or Killeglan Grassland SAC and the possibility of significant effects arising from the development can thus be excluded at this stage.
- 7.4.11. Regarding the River Suck and River Suck Callows SPA, the site is an important site for wintering waterfowl and contains nationally important populations of five species.
- 7.4.12. In view of the fact that storage tanks are adequate to contain all effluent and soiled water and also provide additional storage capacity, together with the level of separation from the drain to the east (which includes intervening grassland that will act as a buffer) and the further separation from the European site, I am satisfied that

¹ <https://gis.epa.ie/EPAMaps/>

significant effects on the European site arising from storage are unlikely and can be excluded at this stage.

7.4.13. I note that An Taisce made a submission on the appeal, identifying a potential hydrological connection between the spread lands and the River Suck Callows SPA. The management of effluent arising from agricultural activities and the undertaking of land spreading is governed by the Good Agricultural Practice for Protection of Waters Regulations, Part 4 of which relates to '*Prevention of Water Pollution From Fertilisers and Certain Activities*'. Subject to compliance with the requirements of the Regulations, I am satisfied that the subject development would not give rise to a risk of significant effects and the issue can therefore be excluded at this stage.

Screening Determination

7.4.14. 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. 004097, or any other European site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.4.15. This determination is based on the following:

- The incorporation of adequately sized storage tanks to accommodate effluent and soiled water arising from the development, and
- The level of separation between the subject site and European site.

8.0 Recommendation

8.1. I recommend that permission be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

The development of an agricultural storage shed is supported by Policy RD5.4 of the Roscommon County Development Plan 2022-2028, which supports the agricultural sector and the development of agriculture to facilitate the development of sustainable

agricultural activities. The proposed development, which incorporates proposals for collection and storage of soiled water and effluent, is considered to be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by additional information received on 18th February 2022 and 24th March 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>
2.	<p>The collection, storage and spreading of organic fertilisers, soiled water and run-off produced by the farm shall be carried out in accordance with the provisions of the Good Agricultural Practice Regulations and any subsequent amendments to these regulations.</p> <p>Reason: To ensure the protection of groundwaters in the vicinity of the site.</p>
3.	<p>Surface water drainage shall comply with the Planning Authority's requirements, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

Barry O'Donnell
Planning Inspector

14th November 2022.