



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313822-22

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<b>Development</b>	To retain slatted effluent tank and for permission to construct a shed over the slatted tank to include a cattle holding area, a slatted are and concrete feed passage together with all associated site development works on site off Cul-De-Sac
<b>Location</b>	Newcastle, Moynalty, Kells, Co Meath
<b>Planning Authority</b>	Meath County Council
<b>Planning Authority Reg. Ref.</b>	22508
<b>Applicant(s)</b>	Eugene Briody
<b>Type of Application</b>	Retention and permission.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Patrick Lynch and Sandra Quigley.
<b>Observer(s)</b>	N/A.
<b>Date of Site Inspection</b>	22.06.2023.

**Inspector**

Mary Mac Mahon

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## 1.0 Introduction

- 1.1. This is a Third Party appeal against the grant of retention permission for a slatted tank and planning permission for shed over the tank, which includes a cattle holding area and concrete feed passage.

## 2.0 Site Location and Description

- 2.1. The site is located circa 12 km northwest of Kells, in an agricultural area. There are a number of individual houses in the area. The site is to the rear of the applicant's property, where his home and machine yard are located. The slatted tank is circa 100 metres from the applicant's dwelling house. On the day I visited the site, the machine yard had a number of trucks stored in it, with two sheds. The second shed backs onto the site, with a cattle crush in between.
- 2.2. The Third Party is located in a house on the northern side of the local road from the slatted tank. There is a dense line of landscaping between the site and the road. The site is circa a metre higher than the road and the appellants' house and well are downgradient of the road and site. There is a dwelling west of the slatted tank and south west of the Third Party's dwelling on lower ground.
- 2.3. On the day I visited the site, the tank was full of water. The site area is stated as 0.2 ha.

## 3.0 Proposed Development

- 3.1. The slatted tank to be retained is circa 19 m X 83.7 m X 2.7 m, with an approximate capacity of 190,000 litres. It is to have an agitation point at either end.
- 3.2. The shed to be constructed is a steel portal frame with a pitched roof, open on one side with an overhang of the feeding area. It consists of a holding area, 4 slatted pens and a feeding area on a concrete apron. The height of the roof ridge is 5 metres. The walls are to be concrete to 1.8 metres and PVC/ Fibre cement or timber side cladding above (1.6 m approximately), with PVC cladding on the roof.
- 3.3. The proposed shed is to be 9 metres to the road boundary.

- 3.4. No soakpit for surface water is shown on the drawings, although box guttering to collect rainwater runoff is indicated.
- 3.5. The gross floor area is stated as 183 square metres and the tank as 190 cubic metres (71 square metres).

## 4.0 Planning Authority Decision

### 4.1. Decision

- 4.1.1. The planning authority decided to grant retention and permission, subject to 8 no. conditions.
- 4.1.2. The conditions include 3(a), that the effluent storage tanks be constructed in accordance with the *Department of Agriculture, Food and Marine S123 Minimum Specification for Bovine Livestock Units and Reinforced Tanks* and 3(b), the livestock shed must be constructed in accordance with the *Department of Agriculture, Food and Marine S101 Minimum Specification for Agricultural Buildings*.
- 4.1.3. Condition 5 requires that the soiled water and effluents must be held so that there is no run-off or seepage into ground or surface waters.
- 4.1.4. Condition 6 requires that no pollution of any watercourse to take place and no reasonable cause for annoyance by reason of smell to persons or premises in the neighbourhood or persons using public places in the neighbourhood.
- 4.1.5. Condition 8 requires that uncontaminated surface water, including roof water be separately collected and shall be discharged to the existing soak pit.

### 4.2. Planning Authority Reports

#### 4.2.1. Planning Reports

- Refers to national, regional and county development plan policies.
- The site is not identified as being in a flood risk zone.
- Objection noted.
- No subthreshold EIAR required.

- Screening for Appropriate Assessment found that the proposed development would not be likely to have a significant effect on European Sites, so no NIS required.
- The proposed development is acceptable in principle.
- No objection from Environment Section, subject to conditions. The report states that the minimum distance between a storage facility and a public/private well shall be 60 metres for new farmyards and not less than 30 metres for existing farmyards, subject to a hydrogeological survey. Separation distances can be achieved in this regard.
- No financial contribution required.

#### 4.2.2. Other Technical Reports

#### 4.2.3. *Flood Risk*

- The site is located in Flood Zone C for fluvial flooding.

#### 4.2.4. *Environment Section*

- Report referred to above relates to a different development, notwithstanding the correct file reference number – it is for a 500,000 gallon overground slurry store near Ardcaith.

### 4.3. **Prescribed Bodies**

#### 4.3.1. None received.

### 4.4. **Third Party Observations**

#### 4.4.1. See appeal section below.

## 5.0 **Planning History**

#### 5.1.1. None on site.

## 6.0 Policy Context

### 6.1. Development Plan

- 6.1.1. The *Meath County Development Plan 2021-2027* applies. The relevant sections are as follows:
- 6.1.2. RUR DEV SO 7 is to support the continued viability of agriculture, horticulture and other rural based enterprises and to promote investment in facilities supporting rural innovation and enterprise, with particular emphasis on the green economy and the management of environmental resources.
- 6.1.3. DM OBJ 62 sets out criteria for applications for agricultural buildings. This includes that buildings are sited to minimise visual obtrusion, comply with the requirements of the European Union (Good Agricultural Practice for the Protection of Waters) (Amendment Regulations 2014) and that all applications shall be accompanied by comprehensive details of all land holdings and herd number(s), if applicable. Sufficient detail is required to demonstrate that all effluent, including yard run-off, is collected and stored within the confines of the development.

## 7.0 Appropriate Assessment Screening

- 7.1.1. The proposed development is not directly connected with or necessary to the management of Natura 2000 site. There are three Natura 2000 sites in proximity to the proposed development. These are the Killyconny Bog (Cloghbally) SAC (Site Code 000006) 4.5km to southwest and the River Boyne and River Blackwater SAC (Site Code 002299) and SPA (Site Code 004232) 8.3km to the southwest.
- 7.1.2. The qualifying interests of the Killyconny Bog are active raised bogs and degraded raised bogs still capable of natural regeneration. The proposed development could not impact on the qualifying interests.
- 7.1.3. The qualifying interests of the River Boyne and Blackwater SAC are River Lamprey, Salmon, Otter and Alkaline Fens. There is no direct connection from the site to the Natura 2000 sites.

- 7.1.4. 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, it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on European Sites the Killyconny Bog (Cloghbally) SAC (Site Code 000006) 4 and the River Boyne and River Blackwater SAC (Site Code 002299) and SPA (Site Code 004232), 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.

## **8.0 EIA Screening**

- 8.1.1. The proposed development is for retention of a slatted tank and permission for an agricultural shed. I note that under Section 34 (12) (b) of the Planning and Development Act, 2000, as amended, the planning authority shall refuse to consider an application to retain unauthorised development of land where the planning authority considered that the application would have required a determination as to whether a determination as to whether an environmental impact assessment is required.
- 8.1.2. I note that the planning authority carried out an EIA Screening and found that the proposed development did not fall into Schedule 5, but considered whether subthreshold EIA was required. It concluded that it was not required in this case.
- 8.1.3. I am satisfied that the development to be retained, a slatted tank for cattle, is not listed as a class for which an EIA is required under 1. Agriculture, Silviculture and Aquaculture in Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 as amended. Therefore, there is no requirement to consider subthreshold EIA and a retention permission can be availed of in this instance.

## **9.0 The Appeal**

### **9.1. Grounds of Appeal**

- 9.1.1. The Third Party lives directly opposite the site. The grounds of appeal can be summarised as follows:



- 9.1.2. The site is subject to enforcement proceedings and a warning letter issued by the planning authority on 03.11.2016. No action was taken until 2022, despite numerous complaints.
- 9.1.3. The site notice was not erected on the 14.04.2022 but on 21.04.2022.
- 9.1.4. The slatted tank is 15 metres from the Third Party's property and 20 metres from the drinking well. To avail of exempted development provisions for agricultural buildings, distances from another dwelling should be 100 metres unless consent is obtained from the owner of the dwelling.
- 9.1.5. The proposed shed will be too close to the family home and would obstruct views and the skyline, as well as give rise to annoyance and disruption, given the nature of the proposed development.
- 9.1.6. The EPA require that slurry storage should be at least 50 metres from a private well. In this instance, it is significantly less.
- 9.1.7. There are other alternatives to the proposed development on the First Party to house cattle and lands further away from the Third Party.
- 9.1.8. Obnoxious smells will arise, including hydrogen sulphide, ammonia, methane and carbon monoxide at agitation stage.
- 9.1.9. There will be noises associated with the day to day activity and smells, which are unavoidable on a farm. Therefore, a buffer zone should be established from surrounding dwellings. In this instance, the First Party has alternative locations to place this facility.
- 9.1.10. Condition 6, which requires that there will be no pollution of watercourses, no reasonable cause for annoyance due to small is impossible to comply with.
- 9.1.11. The gradient means that that the well is only 1.5 metres above the existing slatted effluent tank, increasing the risk of contamination.
- 9.1.12. Shadowing from farm buildings along the 100 metres from the farm buildings along the length of the front boundary.
- 9.1.13. Photographs and other details are enclosed.

## 9.2. Applicant Response

- 9.2.1. The response from the First Party was submitted by the agent, Pascal Reilly Design and Planning Services. It included a number of enclosures.
- 9.2.2. A letter from the First Party outlines how the slatted shed was constructed in 2016. He was unaware that planning permission was required or that there were conditions and limitations to the exempted development classes in relation to agricultural buildings. Work stopped due to personal circumstances. Planning permission to retain and complete the shed has been granted by Meath County Council. The slatted shed is essential for to provide adequate and sufficient slurry storage for the livestock on the farm.
- 9.2.3. Other buildings in the yard are not suitable for this use. The location of the slatted shed is consistent with the clustering of farm buildings and is proximate to the farmhouse.
- 9.2.4. Slurry will be spread from the tank in no more than two occasions per year, which occurs in any case. The smell is part and parcel of rural living. It lasts for no more than one day and even with that, the odour experience depends on the direction of wind on the day in question.
- 9.2.5. The tank has been constructed in accordance with Department of Agriculture grant specifications, by a reliable contractor. It is fully sealed and had a water bar installed at the junction of the floor and walls. The tank has not leaked in the 7 years that it has been installed. The appellants well is a deep bore well.
- 9.2.6. The distance from the tank to the appellants boundary is 19 metres, but it is 23 metres to the well and 38.5 metres to the front of their dwelling house.
- 9.2.7. There is dense, mature evergreen boundary so the proposed shed will not be visible.
- 9.2.8. The herd number is included and a letter from Seamus Murnaghan, Agricultural Consultant, states that there is an 18 week storage requirement for bovine manure under the Nitrates Regulations. Therefore, the tank is essential.
- 9.2.9. On headed notepaper, there is a document from M&R Kearns Construction Ltd., which is unclearly dated, which states that they constructed a slatted tank for the First Party, in accordance with grant regulations.

### 9.3. **Planning Authority Response**

9.3.1. The Planning Authority's response was late.

## 10.0 **Assessment**

10.1. The main issues in this appeal are in my opinion:

1. The principle of the development;
2. The location of the development;
3. Risk of contamination of the private well;
4. Surface water

### 10.2. **The principle of development**

10.2.1. The development to be retained is for agricultural purposes in a rural area and is acceptable in principle. It is in accordance with county development plan policy RUR DEV SO 7 to support the continued viability of agriculture and the management of environmental resources.

10.2.2. DM OBJ 62 requires that agricultural buildings conform to particular criteria. It requires that buildings are sited to minimise visual obtrusion. The proposed shed will be located behind a tall line of evergreen hedging and I am satisfied that it will not be visible.

10.2.3. Dark coloured cladding is required. This can be conditioned.

10.2.4. Developments are required to comply with the European Union (Good Agricultural Practice for the Protection of Waters) 2014, as amended. I note that these regulations have since been updated in 2022. In 2014, organic fertiliser or soiled water shall not be applied to land within 25 metres of any borehole, spring or well used for the abstraction of water for human consumption, under Article 17 (2) (c). This limitation may not apply if the local authority has completed a technical assessment of conditions in the vicinity of the abstraction point, including the likely risk to the water supply and potential danger to human health (Article 14 (4)).

10.2.5. Article 14 states that where farmyard manure is held in a field prior to landspreading it should not be within 50 metres of a well for human consumption.

10.2.6. The distance are the same in the SI No. 113/2022 regulations and unchanged in the later SI No. 393/2022 Regulations..

10.2.7. The policy requires that all planning applications for agricultural development shall be accompanied by comprehensive details of all land holdings and herd numbers. These details have been submitted. I am unable to verify the herd number and note that the Third Party has disputed the number of animals. However, the capacity of the slatted tank is approximately 190,000 litres. Dividing this by 126 days (18 weeks) this gives a daily capacity of approximately 1,500 litres. Relying on the slurry capacity required for cattle 12-18 months old, as set out in the SI no. 113/2022, this would equate to a daily rate of approximately 500 litres for 22 heifers. In contrast, a volume of over 1,700 litres would be required for 80 heifers. Therefore, I do not consider that the slatted tank is intended to cater for 80 heifers. I do not consider that the capacity of the slatted tank needs to be determined by the number of animals, their age etc., in any one year as the numbers may vary over time.

10.2.8. All new and existing agricultural developments are required to show that all effluent, including yard run-off is collected and stored within the development. The information is not stated, but I would assume that the intention is that yard runoff will be directed to the slatted tank.

10.2.9. In general, the development is in accordance with the development control policy. However, the information in relation to landspreading and the necessity to remain 50 metres from a private well is an indication of the impact that the application of slurry to land has and what the implications for the storage of slurry will be returned to in Section 10.4.

### 10.3. **The location of the development**

10.3.1. The location of the slatted tank relative to the well is disputed. I believe that the Third Party is measuring from the footprint of the proposed shed to the well and considers this to be 20 metres. The relevant measure is from the footprint of the slatted tank, which is circa 25 metres from the well.

10.3.2. This distance, however, should not be in dispute. Article 23 (1) (a) of the Planning and Development Regulations, 2001 as amended, require that the site or layout plans accompanying a planning application should show bored wells in the vicinity of the site. That was not done in the application. Article 23 (1) (d) of the above Regulations

require that levels and contours of the land be shown and the location of the proposed structures relative to Ordnance Survey datum. Again, this information was not presented. This information becomes critical when considering the next issue, in relation to the risk of contamination of the Third Party well.

10.3.3. The date of erection of the site notice has been disputed. The site was inspected by the planning authority on 02.06.2022 and there is no reference to the site notice not being present. It was still present on my site inspection, on 22.06.2023.

10.3.4. The issue of odour and noise arises. I would concur with the Third Party that the planning authority's Condition 6 is likely to be ineffectual. Noise and odour will be unavoidable, having regard to the nature of the operation. However, having regard to the location of the site in an existing farm, I do not consider the associated disturbance a suitable reason for refusal. I do not consider that if the operations took place in the existing sheds that there would be any significant difference in terms of impacts.

10.3.5. I do not consider that the proposed shed would significantly overshadow the Third Party's property more than currently occurs in relation to the evergreen landscaping on site.

#### 10.4. **Potential contamination of the private well**

10.4.1. The planning authority, when considering the impact of the proposed development, may not have been fully aware of the proximity of the slatted tank to the Third Party's well. The report from the Environment Section relates to a different site. However, it is noted that the report refers to the need for a minimum distance between a storage facility and a public/private water supply to be not less than 30 metres for existing farmyards, subject to a hydrogeological survey. In vulnerable situations, this distance shall be increased up to 300 metres.

10.4.2. The EPA recommend in relation to drinking water from private wells and distance to slatted sheds in their FAQs on their website that:

*“areas for the storage of farmyard manure, slatted sheds, slurry storage and silage clamps should be at least 50 m from a private well.”*

10.4.3. The First Party has made the case that the tank to date has not leaked. The tank was full of water on the day I visited the site. I note the document from M&R Kearns Construction Ltd, that states that they constructed a slatted tank for the First Party, in

accordance with grant regulations. However, the document does not say when or where they built it. The document is not certification, which is required by the Department of Agriculture for grant aid.

10.4.4. Having regard to the location of the slatted tank, upgradient to a private well and less than 30 metres from that well, I am not satisfied that it has been demonstrated the location of the slatted tanks would not give rise a risk of pollution to the well in question and other wells in the vicinity of the site.

#### 10.5. **Surface Water**

10.5.1. No indication of where the surface water runoff from the roof of the proposed shed is to be stored is shown in the submitted documents. The site is quite restricted in width and this detail needs to be shown to demonstrate that it can be safely disposed of on-site, given the height and gradient of the site above the adjoining road. Uncontrolled surface water might otherwise spill onto the road, impairing road safety. This is a new issue in the context of the appeal.

### 11.0 **Recommendation**

11.1. I recommend that permission be refused for the retention of the slatted tank and shed, for three reasons, as set out below. As referred to above, Reason No. 3 is a new issue in the context of the appeal.

### 12.0 **Reasons and Consideration**

1. Having regard to the location of the slatted tank to be retained, which is upgradient of a private well and less than 30 metres from that, the Board is not satisfied, in the absence of a hydrogeological report by a suitable qualified expert, which demonstrates that the development to be retained would not give rise to a serious risk of pollution to a private water supply, that the development proposed to be retained, would therefore be prejudicial to public health.
2. It has not been demonstrated to the satisfaction of the Board, that the slatted tank to be retained, is watertight and would not give rise to risk of pollution, in the absence of certification from a suitably qualified expert. The development to proposed to be retained, would therefore be prejudicial to public health.

3. It is considered that the plans and particulars submitted with the application, are lacking in detail in relation to the location of wells in the vicinity of the site, do not show contours of the land as required under Article 23 of the Planning and Development Regulations 2001, as amended and do not provide details in relation to surface water disposal. In the absence of such details, the Board does not consider that a grant of permission would be appropriate, having regard to the potential risk to wells in the vicinity of the site and the risk of uncontrolled surface water leaving the site, impairing road safety.

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.

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Mary	Mac	Mahon
Senior	Planning	Inspector

28 June 2023