



An
Bord
Pleanála

Inspector's Report

ABP-314700-22

Development	Retention for slurry and effluent flow channel. Permission for animal feeding and exercise yard to include demolition of structures and associated site development works.
Location	Rath, Danesfort, Co. Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	22450
Applicant(s)	Philip Walsh
Type of Application	Retention and Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	John McMahon
Observer(s)	None.
Date of Site Inspection	19 th April 2023
Inspector	Peter Nelson

1.0 Site Location and Description

- 1.1. The site is located in Rath in County Kilkenny, approximately 10km from Kilkenny City and 4.9km from Kells village. The site has a stated site size of 1.01 ha and forms part of an existing farm complex. The site contains several agricultural buildings and farmyards. The site also contains the applicant's dwelling and a domestic yard. A neighbouring dwelling with agricultural sheds is directly to the west of the site. There are agricultural sheds and dwellings to the northeast of the site. The applicant's farmland is located to the south of the subject site. The stated size of the farm is c.69 hectares.

2.0 Proposed Development

- 2.1. The development consists of the retention of a slurry and effluent flow channel and permission for a roof over an animal feeding and exercise yard. Permission is also sought for the demolition of an existing dry store, the erection of a calf shed, and soiled water tank and for the rearrangement of the cow collecting yard and drafting yard, concrete yard, and all ancillary works.

3.0 Planning Authority Decision

3.1. Decision

Kilkenny City and County Council issued a decision to grant retention and permission on the 31st of August 2022, subject to 6no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report dated the 31st of August 2022 reflects the decision to grant permission. The main points can be summarised as follows:

- The proposed new shed and calf shed will be sited adjacent to the existing farm buildings and are in keeping with the existing agricultural structures.

- The proposed buildings will not have a negative visual impact on the surrounding rural landscape.
- Given the existing agricultural nature and site context, the development would not significantly impact the residential amenity of neighbouring properties.
- The Environment Section raise no objection to the effluent channel.

3.2.2. Other Technical Reports

Environment Section

The report dated the 24th of August 2022 has no objections subject to the attachment of 3 no. conditions.

Roads Design

The report dated the 9th of August 2022 has no objection.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

On file, there is one third party observation (the appellant). Issues raised are:

- The proposed building will add to the air pollution, which is already bad.
- The slurry tank extension and proposed roof of the slatted house are close to the neighbouring property.
- The yard around the slatted house and silage pit has been raised with hundreds of tonnes of gravel to divert water and slurry from the neighbouring property without the benefit of planning permission.
- The entrance to the development is not suitable or safe. The site needs a wider road entrance and a better view for road users.
- No room for parking on the road.
- The planning notice was first seen on Sunday, 24th of July 2022.

4.0 Planning History.

Enforcement

The Board will note that there is an enforcement file relating to this site: Ref: ENF21078. A Warning letter was issued on the 28th of July 2021 regarding an unauthorised effluent channel and associated works.

5.0 Policy Context

5.1. Development Plan

The Kilkenny County Development Plan 2021-2027 is the operative Development Plan for the area. This Plan came into effect on the 15th of October 2021.

5.2.4 Agriculture & Food

The Plan will facilitate and support the development of agriculture and food while ensuring the highest standards of environmental protection in the assessment of planning applications for all development proposals.

7. Rural Development

Strategic Aim:

To manage rural change and guide development to strengthen the rural economy and community through the network of towns and villages, ensuring vibrant, sustainable and resilient rural areas whilst conserving and sustainably managing our environment and heritage.

Policy:

- Promote the sustainable development of rural areas.
- Protect the quality and character of rural areas.
- Protect the quality of the environment, including the prevention, limitation, abatement and/or reduction of environmental pollution and the protection of waters, groundwater and the atmosphere.

5.2. Natural Heritage Designations

The site is not located within any designated site. The site is located approximately 3.2 km to the north of the River Nore SPA and the River Barrow and River Nore SAC.

5.3. EIA Screening

Having regard to the nature of the development comprising the development and retention of agricultural development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The main points can be summarised as follows:

- The submitted Farm Waste Management Plan does not provide additional details to address waste management practices, such as estimating the minimum areas required for spreading slurry and dirty water or sludge application rates. This information is required to permit a full assessment of the impact of the proposed new facilities.
- The scale of the development is considered to represent a material increase in built structures on site and, consequently increased scale of activity on site.
- Most of the new structures are located away from the extant farm dwelling and amalgamated with the slurry channel close to the McMahan Farmlands.
- The noise associated with the removal of calves from the mothers is of distressing volume. These calves are proposed to be housed in proximity to the McMahan residence.
- Due to the existing extant levels of livestock on the landholding, the odour is already excessive on agitation days.

- The applicant has not provided sufficient details on odour mitigation proposals.
- Unit No.24 will be open-ended, creating a wind tunnel effect that will direct odours towards Mr Mahon's Land.
- The impact of the proposed development, close to Mr McMahan's landholding, must be subject to a robust determination of environmental impacts.
- A number of planning conditions relating to run-off, seepage and air emission/odours may be applied if the An Bord determines in favour of the applicant.
- The existing malodorous impacts from the slurry channel will be exacerbated should consent be granted for the subject proposal to retain the effluent channel and construct a slatted floor and roof, open at both ends.
- The process of washing down will cause run-off flow towards the appellant's land.
- The proposed loading of the new development will provide additional opportunity for wastewater discharges towards the appellant's landholding and established land drain.
- A hydro-geological survey is required to ensure the protection of groundwater.
- The proposal is contrary to development plan policies, as adequate sightlines cannot be achieved.
- The proposed development will reduce the complex's vehicle turning and cleaning area.

6.2. Applicant Response

The main issues in the applicant's response can be summarised as follows:

- The existing building no.18 has been used for approximately the last 20yrs to house replacement livestock for the dairy herd over their first winter months.

- The flow channel improves the facility as it decreases the volume of slurry at foot and is an effective method of conveying the slurry to the storage tanks.
- The channel removes the potential for accidental seepage to the adjoining paddock to the southwest.
- The potential increase in slurry can be accommodated in the system.
- Overall livestock numbers will decrease.
- The proposed accommodation will allow a dedicated, purpose-built facility to rear calves in one building, improving efficiency.
- The existing farm and the neighbouring farm are already in close proximity.
- In an existing farmyard where livestock numbers are decreasing, renewing and improving will not increase any odours that may or may not already be present.
- Developing a wind tunnel effect would counter good livestock building design and will not be created by the proposed development.
- Slurry agitation occurs in building No.22, located the farthest away from the appellant's landholding.
- The farm management prevents any pollution of the open land drain between the applicant's and the appellant's property.
- The appellant has submitted no evidence that the existing buildings on site have diverted flows towards the appellant's property.
- The proposed improvements to the applicant's farm will help guard against any potential pollution event.
- The size of the herd and dairy operation is decreasing, which will lead to a decrease in related traffic.
- The farmyard has sufficient room for delivery trucks to enter, load/unload products, turn around and leave the property by the same route.
- The submitted revised site layout improves road safety and increases sightlines at the junction with the local road. The applicant would be happy to carry out these works.

- The reduction in clean yard area due to the new development is minimal.

6.3. **Planning Authority Response**

- None Received.

6.4. **Observations**

- None Received.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, carried out a site inspection, and having regard to the relevant local/regional/national policies and guidance, I consider that the key issues on this appeal are as follows:

- Scale of Development
- Noise and Odour
- Drainage and Slurry Channel
- Access and Sight Lines.
- Appropriate Assessment

7.2. **Scale of Development**

7.2.1. The appeal site is part of an established overall farm holding of approximately 69 hectares. It is evident that the works subject of the application are to improve the farm's efficiency and viability and reduce the possibility of negative environmental effects. Having regard to the established nature of the farm enterprise, I consider it reasonable that there would be a presumption in favour of improving and upgrading farm buildings to meet current farming standards, including provision for adequate slurry storage.

7.2.2. It is proposed to develop two additional buildings and a slatted tank in the existing farmyard complex. The proposed livestock building, annotated as building No.24, is attached to the existing Loose Houses and Cubicle Houses. This structure is open-sided. This building has a stated floor area of 257 sqm and a maximum height of

c.6.1m, below the maximum height of the adjoining sheds. Another proposed building, No.23, is attached to existing building No.17 and attached to No.24. This has a floor area of 18 sqm. The proposed calf shed, annotated building No. 26, is a free-standing open-fronted unit with a stated floor area of 170 sqm and a maximum height of c.7m. Proposed building No.23 and No.24 are approximately 20m from the boundary with the appellant's land holding. The rear of the appellant's farm buildings is on this shared boundary. Proposed building No.23 is located approximately 2.8m from the side of the appellant's farm building.

- 7.2.3. I consider the proposed buildings suitable in this location as they reflect the scale and character of the existing farmyard and the immediate area. Given the agricultural character and the size of the site and the location of the appellant's site, I consider that the proposed development will not be visually obtrusive or be seriously injurious to the residential amenity of the adjoining property and, in this regard, does not represent over-development of the site.

7.3. Noise and Odour

- 7.3.1. The appellant raised concerns relating to a potential increase in noise arising from the proposed development and its impact on their dwelling. In particular, the appellant states that the noise associated with the removal of the calves from their mothers at a young age is one of distressing volume and that the proposed building is housed in close activity to the appellant's residence. The applicant states that a dairy farm has existed for three generations. I note that calves have been housed in several buildings on the farmyard, all close to the proposed calf shed. The applicant states that on a whole herd basis over a three-month period, 70no. female calves and 70no. male calves will be produced. The male calves will be sold and leave the farm after reaching ten days old. The requirement to house 100 calves in the proposed calving shed will only arise if there are any disease outbreaks or other problems on a temporary basis only.
- 7.3.2. Given the current dairy farming use of the site and the proposed rationale for the calving shed, I do not consider that the increase in noise will be significantly injurious to the residential amenity of the appellant's dwelling.
- 7.3.3. The appellant raised concerns over the potential for odour from the proposed calving shed. Given the current use of the farmyard serving a dairy farm and the proposed

calving numbers, I do not consider that the proposed calving shed will significantly increase odour and will not be seriously injurious to the residential amenity of the adjoining dwelling. I also consider that the proposal to roof the existing open livestock feeding and exercise yard and leave either end of the building open will not cause a wind tunnel effect or significantly increase odour.

7.4. Drainage and Slurry Channel

- 7.4.1. The appellant raises concerns regarding the slurry channel to be retained and its potential to cause run-off towards the appellant's land. The slurry channel is to serve existing building no.18 and proposed sheds no.23 and 24. The slurry from the animals was previously scraped to the southern end of building no.18 and away to the slatted tanks daily. I consider that the slurry channel is an improvement on the previous system of conveying the slurry to storage tanks and reduces the potential for run-off towards the appellant's land.
- 7.4.2. The protection of groundwater and of the appellant's source of potable water has been raised in the appeal. The site is not located in a vulnerable groundwater area or a designated Natura Site. The Environment Section of Kilkenny County Council had no objection to the proposed development subject to the attachment of a condition requiring that all clean stormwater from the proposed buildings be managed via suitable-sized soakaways. It is considered that the use of soakaways designed per BRE Digest 363- Soakway Design guidelines for the proposed buildings will ensure groundwater protection. If the Board are minded to grant, I recommend that a condition be attached requiring the agreement of surface water disposal with the Planning Authority.
- 7.4.3. Regarding the spreading of slurry, the applicant has stated that the overall livestock will decrease under the proposed plan as presented in the planning application. The onus will be on the applicant to comply with good agricultural practices. Notwithstanding this, if the board to minded to grant permission I recommend that a condition be attached ensuring that 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 Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2017 (SI No 605 of 2017).

7.5. Access and Sightlines

Concerns relating to the safe ingress and egress to the site have been raised in the appeal. Concerns are also raised about the amount of space within the farmyard to turn vehicles, including milking tankers. I note that the Roads Department of Kilkenny County Council has no objection to the development.

The applicant states that the proposed works will not intensify the existing farming operations on the site.

A revised site plan has been submitted with the appeal, which details a swept path analysis for milk trucks or trucks delivering meal. I am satisfied that with the proposed buildings, there will be adequate space within the farmyard for the safe turning of vehicles.

The revised site plan also proposes alterations to the northern boundary wall at the main entrance to the farmyard. This will improve the existing site lines at this entrance. No hedgerow removal is required to facilitate this alteration.

Given that there will not be a significant increase in traffic movement due to the proposed development, I consider that the entrance with the proposed amendments is acceptable and will not cause an additional traffic hazard.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the scale of the proposed development on an existing farmyard, the site location outside of any protected site and the nature of the receiving environment, and the distance of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. I recommend that planning permission for retention and completion of the development as set out be granted subject to the following conditions.

9.0 Reasons and Considerations

9.1. Having regard to the nature and extent of the proposed development and the history of on-site agricultural activity, and the existing character and pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development to be retained and completed would not seriously injure the amenities of the area or of property in the vicinity and would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended plans and particulars received by An Bord Pleanála on the 6th day of October 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>Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard- (a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, to soakaways, and (b) all soiled waters shall be directed to the slatted storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority prior to commencement of development.</p> <p>Reason: In the interest of public health.</p>

3.	<p>All foul effluent and slurry generated by the proposed development and in the farmyard shall be conveyed through properly constructed channels to the 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.</p> <p>Reason: In the interest of public health.</p>
4.	<p>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 Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2022 (SI No 113 of 2022).</p> <p>Reason: To ensure the satisfactory disposal of waste material, in the interest of amenity, public health and to prevent pollution of water courses.</p>
5.	<p>A minimum of 16 weeks storage shall be provided in the underground storage tank. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.</p> <p>Reason: In the interest of environmental protection and public health.</p>
6.	<p>The roof and side cladding of the structures shall be coloured to be similar to existing buildings within the farm complex.</p> <p>Reason: In the interest of visual amenity.</p>

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.

Peter Nelson
Planning Inspector

21st June 2023