



An
Bord
Pleanála

Inspector's Report

ABP-314879-22

Development	Retention of cubicle house with slatted tank as constructed (change of plan to that permitted under 20/4073).
Location	Inchinapallas, Ballyhooly, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	225757
Applicant(s)	John and Jerry O'Connor
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Mary Scanlan
Observer(s)	None
Date of Site Inspection	25 th January, 2024
Inspector	Lorraine Dockery

1.0 Site Location and Description

1.1. The subject site is located within a dairy farm complex situated in a rural area approximately six kilometres west of Fermoy and 3km east of Ballyhooly in north County Cork. Access to the farmhouse and farmyard is via a narrow sloping roadway which runs north of the N72 Fermoy Mallow Road. The overall farm complex, which includes a dwellinghouse, is intersected by the roadway while the appeal site is solely on the eastern side of the roadway. The nearest third-party dwelling is a bungalow located approximately 87m to the south at the junction of the laneway and N72.

2.0 Proposed Development

2.1. The proposal comprises retention of cubicle house with slatted tank as constructed (change of plan to that permitted under 20/4073).

2.2. The cubicle house permitted under 20/4073 had a stated floor area of 445m². That currently proposed for retention has a stated area of 716m². The slatted tank is approximately 10.5metres longer than that previously permitted. The proposed increase in floor area is to the north of that previously permitted.

2.3. This increase in floor area allows for 11 additional cubicle bed spaces along with an increase in nett slurry storage capacity of approximately 253m³.

3.0 Planning Authority Decision

3.1. Decision

Permission GRANTED, subject to 26 no. conditions

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Reflects decision of planning authority; recommends grant of permission

3.2.2. Other Technical Reports

Environment Section- No objections, subject to conditions

Area Engineer- No objections, subject to conditions

3.3. **Prescribed Bodies**

An Taisce: Should be ensured that the application demonstrates compliance with the GAP Regulations, Habitats Directive (92/43/EEC) and Water Framework Directive (2000/60/EU), given the increased size of the structure for which retention is sought given its locational context

3.4. **Third Party Observations**

The planning authority received one objection that raised issues similar to that contained in the third party appeal.

4.0 **Planning History**

20/4073 (ABP-307389-20)

Permission GRANTED to construct a cubicle house with slatted tank, silage slab with effluent tank and ancillary works. Decision UPHELD on appeal

06/4461 (PL04.217961)

Permission GRANTED for demolition of existing sheds, construction of a silage slab and apron in its place and construction of a cubicle house and calf house with slatted tanks, extension to milking parlour and ancillary works.

5.0 **Policy Context**

5.1. **Development Plan**

The Cork County Development Plan 2022-2028 applies.

The subject site is located outside of any existing development boundaries, as set out in the operative County Development Plan and relates to an agricultural development.

The site is located within an area characterised as being of High Landscape Value

The following objectives are noted:

Objective WM 11-6 Protection from Agricultural Pollution

Objective WM 11-2 Surface Water Protection

Objective EC:8-15 Agriculture and Farm Diversification

5.2. **Natural Heritage Designation**

The site is not located within any designated site. The site is approximately 300m north of the Blackwater River (Cork /Waterford) SAC (Site Code 002170) and approximately 6.5km west of the Blackwater Callows SPA (Site Code 004094).

5.3. **EIA Screening**

Having regard to the nature and scale of the 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.

5.4 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development which is considered to be a relatively minor extension to an existing permitted farm enterprise, the nature of the receiving environment and the intention to provide for effluent storage to cater for existing stock and thereby aid compliance with SI No 605/2017 – European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017, I consider that it is reasonable to conclude that there is no potential for significant effects and that therefore Appropriate Assessment is not required. It is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

6.0 The Appeal

6.1. Grounds of Appeal

The third party appeal may be broadly summarised as follows:

- Procedural/legal matters relating to ABP reference no. not being specified in public notices or application form and land ownership
- Retention application materially contravenes conditions No.s 1-7 of ABP-307389-20.
- Compliance with conditions of previous grant of permission
- Setting of precedent for retention permissions
- Surface water concerns
- No condition imposed on livestock restrictions
- Photographs submitted in support of appeal

6.2. Planning Authority Response

All relevant issues have been covered in the technical reports forwards to ABP, with no further comment to make.

6.3. Observations

None

6.4. Further Responses

A response was received on behalf of the first party, which may be summarised as follows:

- Dairy farmers on 104 hectares carrying 180 cows, 52 heifers, 83 weanlings and 2 bulls
- Outlines planning history on lands
- Hoping to apply for TAMS II grant from Dept of Agriculture. Reason for the increased size of cubicle house was that since initially applying for

permission, the Department of Agriculture proposed new guidelines for housing animals during winter months. The increased size of cubicle house was to comply with these guidelines.

- Acknowledges error in site location map in that it included adjacent lands not in control or ownership of applicants. Revised map submitted seeking to rectify this error

A further response was received on behalf of the third party in which no new planning matters were raised.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including the reports of the planning authority and prescribed bodies, the appeal submission received, together with having inspected the site, I consider that the main issues in this appeal are as follows:

- Principle of proposed development
- Surface water concerns
- Other matters

7.2 I refer the Board to ABP-307389-20 for which a detailed planning assessment was undertaken for the development, as originally proposed. It is noted that the site boundary (as outlined in red) is altered from that previous appeal. Many of the matters raised in this third party appeal are similar to those raised by the same appellant in that appeal.

7.3 Principle of proposed development

7.4 The proposed development comprises retention permission for cubicle house with slatted tank as constructed. The principle of this existing facility is considered to have been established by the planning authority and An Bord Pleanála under Reg. Ref. 20/4073 (ABP-307389-20). The site is located within a rural area and the proposal for retention forms part of a wider agricultural complex. The proposed development for retention is considered to be compatible with the established land use within this rural area.

7.5 The first party have given justification for the need for the additional size, stated to be in order to comply with Government guidelines for housing of animals during the winter months. The planning authority state that the proposed development will provide additional slatted livestock accommodation, improve the efficiency of the dairy enterprise and aid compliance with the requirements of S.I No. 113 of 2022 as amended, European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022.

7.6 Based on the above, I am satisfied that the principle of the proposed development is acceptable at this location. There are numerous policies that support agricultural development contained within the operative Development Plan. I consider that the proposal for retention permission will not set a precedent for other similar type of permission in the vicinity. In any event, all applications are assessed on their own merits. Height, materials and elevational treatment integrates well with that previously permitted. I am satisfied in this regard.

7.7 Surface water

7.8 The issue of surface water disposal is a key concern arising within this appeal. Similar issues were raised in the appeal ABP-307389-20 and I highlight to the Board that this matter was comprehensively assessed at that time. I refer the Board to same. I note the photographs submitted with the appeal submission. It is unclear where some of these photographs were taken, given the lack of context.

7.9 While I acknowledge the concerns raised by the appellant, I do not consider that a grant of planning permission in this instance will exacerbate any potential risk of flooding/surface water issues, given its size and scale relative to that previously permitted on an established farm complex. The farmyard is served by an existing public mains connection and a private well for water supply. The site is not located within a flood risk area. The applicants have confirmed that the proposed development will not lead to an increase in livestock numbers on the holding or an intensification of the dairy enterprise. The planning authority have not raised concerns in this regard, subject to conditions. The Area Engineer's Report (dated 23/08/2022) states that surface water from the front portion of the site runs to the existing public wastewater system on the road and it flows to a soakway at the back of the new structure from the remainder of the site. The Area Engineer confirms that all this appears to be managed adequately. An Bord Pleanála did not raise concerns

in this regard in the previous, most recent appeal on the lands, subject to conditions. I recommend that if the Board is disposed towards a grant of permission, that the matter could be adequately dealt with by means of condition. Overall, and having regard to the planning history of the subject site, I am satisfied that the proposed retention permission at this location is acceptable and would accord with the proper planning and sustainable development of the area.

7.10 Other Matters

7.11 The submissions by the third party appellant contains information/allegations not related to planning matters, which I have not had regard to.

7.12 The first party are seeking to regularise the existing planning situation and non-compliance with grant of permission ABP-307389-20 by way of this retention permission application. I am satisfied in this regard and do not consider that material contravention matters arise.

7.13 In terms of the lack of reference to ABP reference number within the submitted public notices/application form, I am satisfied that there is adequate information provided. The purpose of the public notices is to alert the public to proposed development on the lands. The appellant is obviously aware of the proposed development in making the submissions and therefore I am satisfied in this regard.

7.14 Matters relating to enforcement and compliance with conditions are outside the remit of this planning appeal. The decision-making processes of the planning authority are also outside the remit of this appeal. They are matters for the planning authority.

7.15 The first party has addressed the error in relation to the boundary/ownership on the site location map submitted and has submitted a revised site location map rectifying same. I am satisfied in this regard.

7.16 Conclusion

7.17 Having regard to the above, I am satisfied that the proposed development is in accordance with the objectives of the Development Plan, is in keeping with the pattern of development in this rural area and is in accordance with the proper planning and sustainable development of the area.

8.0 Recommendation

8.1. I recommend that the decision of the planning authority be UPHELD and that permission be GRANTED, subject to the following conditions.

9.0 Reasons and Considerations

9.1 Having regard to the nature and extent of the proposed agricultural development, to the history of on-site agricultural activity, and to 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 would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be retained in accordance with the plans and particulars lodged with the application, 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 development shall comply with all conditions of ABP-307389-20, save as may be amended by other conditions attached hereto Reason: In the interests of clarity

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.

Lorraine Dockery
Senior Planning Inspector

30th January 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-314879-22		
Proposed Development Summary	Retention of cubicle house with slatted tank as constructed (change of plan to that permitted under 20/4073).		
Development Address	Inchinapallas, Ballyhooly, Co. Limerick		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	x
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	x		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
		Conclusion	
No	x	N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: Lorraine Dockery_____

Date: 30/01/2024_____