



An  
Bord  
Pleanála

## Inspector's Report ABP-315600-23

### Development

Retention and completion of an agricultural barn, 6-bay stable building, roofed storage area, and extension of walls and roof to existing machinery store along with site levelling and all ancillary site services and works.

### Location

Kingston Road, Ragoon, Galway

### Planning Authority

Galway City Council

### Planning Authority Reg. Ref.

22/81

### Applicant(s)

Paul Cairns

### Type of Application

Retention permission

### Planning Authority Decision

Grant, subject to 4 conditions

### Type of Appeal

Third Party -v- Decision

### Appellant(s)

Jerry & Eileen D'Onofrio

### Observer(s)

None

**Date of Site Inspection**

11<sup>th</sup> May 2023

**Inspector**

Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located in the western suburbs of Galway City within an area of fields that lie between the Western Distributor Road to the north and Kingston Road (R337) to the south. These fields have been encroached upon by new housing to the east and west in The Orchard Estate and on Kingston Gardens, and by four-storey apartment blocks, known as Altan Apartments, to the north. A new road from a roundabout on the Western Distributor Road serves these apartment blocks, and, further to the west of the site, it serves a national school, St. John the Apostle.
- 1.2. The site is accessed from Kingston Road by means of a road of single lane width. This road provides access to three dwelling houses, too, including the appellants', which is adjacent to the southern boundary of the site. An informal road has also been constructed between the site and the above cited new road, across lands under the applicant's control.
- 1.3. The site is of regular shape, and it is relatively level beyond its elevated entrance point from the south. This site extends over an area of 0.373 hectares. Two older buildings lie in its centre and a further one in the south-western corner. One of the former buildings and the latter building were originally cottages. The remaining former building appears to have originally been an outbuilding. It is now two stables. A further small building adjacent to the southern boundary of the site has been rebuilt/extended and it is accompanied by a small metal clad shed. The more recent buildings which lie in the eastern half of the site are described below under the heading "proposed development". Yard areas lie between the buildings and, insofar as the site is enclosed, dry stone walls and hedgerows denote its boundaries.

## 2.0 Proposed Development

- 2.1. The buildings, which are the subject of this application for retention permission, comprise the following:
  - In the south-eastern quadrant of the site, adjacent to the site entrance point from the south, an open-fronted machinery shed (c. 49 sqm), which the applicant has refurbished to ensure its structural stability. This shed is

composed of stone and blockwork under a mono-pitched roof. It's used to park vehicles and machinery and to store implements.

- Centrally, and beside the eastern boundary of the site, an agricultural barn (126.42 sqm) has been built. The principal elevation of this barn faces west, and a pair of double doors have been installed in this elevation. It is composed of blockwork and corrugated metal sheeting under a double pitched roof. The barn is used as a loose house to accommodate either a sick or in-foal horse, and to store fodder and riding tackle.
- In the north-eastern quadrant of the site, a block of 6 no. stables (83 sqm) has been built. This block is composed of blockwork under a double pitched roof. It is used for housing and bedding horses only.
- In the north-eastern corner of the site and to the rear of the stable block, an open-fronted storage shed (20 sqm) has been built. This shed is composed of blockwork under a mono-pitched roof. It is used to store bedding and fodder.

2.2. The above buildings have a total floorspace of 278.14 sqm. The pre-existing buildings described under the first heading of this report have a total floorspace of 198.1 sqm. The combined floorspace of old and new buildings is 476.24 sqm.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Following receipt of further information, retention permission/permission was granted, subject to 4 conditions, one of which states that the buildings shall be used only for the uses specified in the applicant's further information response.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The case planner's report acknowledges that the site is zoned "R" residential. However, he cites Section 11.1 of the Galway City Development Plan 2017 – 2023, which states that extensions or improvements to premises accommodating non-conforming uses may be granted, subject to avoidance of injury to amenities. In this

respect, he notes that the Altan Apartments to the north and dwelling houses to the south, which front onto Kingston Road, are variously 110m and 170m away.

Further information was sought with respect to surface water drainage arrangements and the uses to which each building would be put. The PA was satisfied with the applicant's subsequent response.

### 3.2.2. Other Technical Reports

- Galway City Council:
  - Environment and Climate Change: Following receipt of further information, no objection.
  - Drainage: No objection, subject to a surface water condition.

## 4.0 Planning History

Enforcement enquiry concerning proposal, which is the subject of the current application. PA issued warning notice.

## 5.0 Policy and Context

### 5.1. National Planning Guidelines

Development Management

### 5.2. Development Plan

Under the Galway City Development Plan 2023 – 2029 (CDP), the site is shown as lying within an area zoned “R” residential, wherein the objective is “To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.” Adjoining lands to the north-east of the site are zoned “CI” enterprise, light industry, and commercial, wherein the objective is “To provide for enterprise, light industry and commercial uses other than those reserved to the city centre zone.”

The following paragraph from Section 11.1 is cited in the case planner's report:

*Many legally established uses exist in locations where they do not conform to the designated land use zoning objective set out in the Plan. Extensions to or improvements of premises accommodating these non-conforming uses maybe granted, where the proposed development would not be injurious to the amenities of the area, and would not prejudice the proper planning and sustainable development of the area.*

### **5.3. Natural Heritage Designations**

- Galway Bay Complex SAC & pNHA (000268)
- Inner Galway Bay SPA (004031)

### **5.4. EIA Screening**

Agricultural sheds are not a class for the purposes of EIA.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The view is expressed that Galway City Council Regulations state that stables should be built outside its jurisdiction, and not within 100m of a dwelling house without the householder's written consent.
- The case planner's report refers to Altan Apartments and dwelling houses, which front onto Kingston Road. The separation distance cited between the stables and these apartments is incorrectly cited as being 110m, when it is c. 80m. The appellants' dwelling house is 52m away, and reference to it is omitted from the case planner's report. Consequently, the PA's decision violates the above cited "100m rule".
- The following previously raised concerns are reiterated:
  - There is a risk that horse waste will drain onto the appellants' residential property.
  - Cottages, as distinct from stables, were the only buildings previously on the site.

- The applicant states that the farm is “private and not commercial”. However, he refers to it as a stud farm, which would lead to an increase in traffic, as horses are transported to and from the stables.
- The submitted plans do not show the roads to the site as being within the red edge of the application site. The newly built northern road was used during the construction phase of the stables: would it continue to be used during the operational phase or would the southern road be used? If the former, should the applicant have applied for retention permission to use this means of access?

## 6.2. Applicant Response

None

## 6.3. Planning Authority Response

None

## 6.4. Observations

None

## 6.5. Further Responses

None

## 7.0 Assessment

7.1. I have reviewed the proposal in the light of the Galway City Development Plan 2023 – 2029 (CDP), the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) The need for permission,
- (ii) Zoning and land use,
- (iii) Amenities,



- (iv) Access,
- (v) Water, and
- (vi) Appropriate Assessment.

**(i) The need for permission**

- 7.2. Under further information, the applicant explained that the small farm holding, which he owns, is a stud farm on which horse training is undertaken. Under Section 2(1) of the Planning and Development Act 2000 – 2023, agriculture is defined as including “the training of horses and the rearing of bloodstock”. Accordingly, the use of his farm holding comes within the definition of agriculture.
- 7.3. Under the proposal, the applicant seeks, amongst other things, the retention of an agricultural barn and stables for the purpose of housing horses. The appellants state that the PA requires stables to be built outside its jurisdiction and, in the absence of a householder’s written consent, that they be sited over 100m from the nearest dwelling house. In this respect, the appellants draw attention to the separation distance of 52m between the stables and their dwelling house. (The agricultural barn would be even nearer).
- 7.4. I am unable to account for the appellants understanding of no new stables within the city’s limits. I am able to account for the reference to 100m, which arises under Condition and Limitation 5, which accompanies Class 6 of Part 3 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2023. Essentially, 200 sqm roofed structures for housing horses can be exempted development, provided the accompanying Conditions and Limitations are fulfilled/adhered to. In the case of the current proposal, this would not be the so, as Condition and Limitation 5 would not be adhered to. Hence the need for planning permission arises.
- 7.5. Condition and Limitation 5 do not disallow stables within 100m of a dwelling house. They just require that such stables be the subject of planning permission.
- 7.6. Under Class 9 of Part 3 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2023, the same 100m separation test applies to agricultural buildings that would not house animals or birds. Accordingly, the two open-fronted sheds proposed for retention need permission, too.

7.7. I conclude that the need for permission exists if the new buildings on the site are to be retained.

**(ii) Zoning and land use**

7.8. Under the CDP, the site is zoned “R” residential. The entirety of the applicant’s lands edged blue on drawing no. 3001 are, likewise, zoned “R” residential, while adjoining lands to the north-east are zoned “CI” enterprise, light industry, and commercial. The respective zoning objectives are as follows:

*To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.*

*To provide for enterprise, light industry and commercial uses other than those reserved to the city centre zone.*

7.9. The CDP addresses the question of land uses in the above zones. Under the proposal, the applicant seeks to retain recently constructed buildings, which facilitate the use of his lands as a stud farm. This use is not identified as being either a use that would be compatible with and which would contribute to these zoning objectives or a use which may contribute to these zoning objectives depending on location and the scale of the development. It is thus a non-conforming use.

7.10. The PA acknowledged that the use is a non-conforming one. However, it took the view that, based on advice set out in Section 11.1 of the CDP, this use would be acceptable. This advice is as follows:

*Many legally established uses exist in locations where they do not conform to the designated land use zoning objective set out in the Plan. Extensions to or improvements of premises accommodating these non-conforming uses maybe granted, where the proposed development would not be injurious to the amenities of the area, and would not prejudice the proper planning and sustainable development of the area.*

7.11. Under further information, the applicant was asked to elucidate the uses envisaged for each of the buildings proposed for retention. By way of background, he stated that his lands have been in his family for over 100 years and that they have been operated as a small farm holding. He now operates them as a stud farm, which includes horse training, too. As the existing stables and sheds were ram shackled

and not “fit for purpose”, he proceeded to construct the buildings, which are the subject of his application for retention permission.

- 7.12. During my site visit, I observed the pre-existing buildings in the south-west and centre of the site. Essentially, they comprise two traditional stone cottages and an outbuilding, which has been converted into two stables. They are accompanied by a small building adjacent to the southern boundary of the site, which has been rebuilt/extended and a small metal clad shed. They have a combined floorspace of 198.1 sqm. (Historically, the footprint of the machinery shed proposed for retention would have been a further stone building). Clearly, the cottages have not been used as dwellings for some considerable time. Their low eaves heights and domestic openings limit their utility for modern farming use. Likewise, the outbuilding, the small building and the small metal clad shed are of limited utility. The conversion of the outbuilding to two stables appears to have occurred some time ago. Insofar as it may predate the construction of the new buildings in the eastern portion of the site, the use of this building would be consistent with a low-level of farming activity.
- 7.13. During my site visit, I also observed the new buildings that the applicant has recently constructed to facilitate his stud farm. These include an agricultural barn, which is used in part as a loose box, and a block of 6 no. stables. (I counted 7 no. horses on the applicant’s lands). Along with the machinery shed and a small storage shed, these buildings have a combined floorspace of 278.14 sqm. Each building is suited to the use allocated to it.
- 7.14. In terms of the above cited advice from Section 11.1 of the CDP, I consider that the applicant has not extended or improved his pre-existing buildings. Instead, he has constructed 4 no. new buildings to facilitate his stud farm. The combined floorspace of these buildings exceeds the combined floorspace of the pre-existing buildings. Accordingly, they have facilitated an intensification in the agricultural use of his lands. Effectively, the applicant has built a modern farmstead alongside an obsolete one. As such, I do not consider that this development comes within the ambit of Section 11.1. Instead, it reinforces a non-conforming use of the applicant’s lands.
- 7.15. The PA’s planning register does not show any extant residential permissions for the applicant’s lands. Modern residential developments have, however, occurred in the vicinity of these lands, and a new road to their north-west includes a site entrance to

them, which is intended to facilitate their future access for development. In these circumstances, I am concerned that to grant permanent retention permission for the 4 no. buildings would prejudice the fulfilment of the “R” zoning objective.

7.16. Under Section 7.5 of the Development Management Guidelines advice is given on the use of temporary permissions. For ease of reference, an extract is set out below:

*First, the grant of a temporary permission will rarely be justified where an applicant wishes to carry out development of a permanent nature that conforms with the provisions of the development plan. Secondly, it is undesirable to impose a condition involving the removal or demolition of a structure that is clearly intended to be permanent. Lastly, it must be remembered that the material considerations to which regard must be had in dealing with applications are not limited or made different by a decision to make the permission a temporary one.*

7.17. In the present case, the applicant proposes the retention of 4 no. permanent buildings, which are in use and which facilitate the wider use of his lands as a stud farm. This use is a non-conforming use under the CDP. Their retention even on a temporary basis would prejudice the fulfilment of the zoning objective of the site, which is to see it and the applicant’s other lands developed for residential use.

7.18. I, therefore, conclude that the proposed retention of the 4 no. new agricultural buildings on the site would prejudice the fulfilment of the residential zoning objective for the site.

### **(iii) Amenities**

7.19. The site lies within a cluster of fields, which are bound by residential development on all sides. The nearest such development, Altan apartments, lie c. 50m to the north.

7.20. The appellants’ residential property adjoins the southern boundary of the site. They have calculated that the separation distance between their bungalow and the stable block is 52m. They object to the proposal on the grounds that formerly stables did not exist on the site and that these stables adversely affect their residential amenities.

7.21. Under the second heading of my heading, I have discussed the intensification of agricultural use that is facilitated by the stables, amongst the other new buildings on the site. Accordingly, an increase in activity is occurring, and a related increase in noise and general disturbance is ensuing. That said insofar as the appellants’

bungalow is closer again to the pre-existing buildings, when they were in greater use, noise and general disturbance would have ensued.

- 7.22. Under the fifth heading of my assessment, I discuss the absence of any details as to how horse manure would be handled. I recognise that this aspect of the stud farm has the potential to affect residential amenity, and so I consider that, in the event that the Board is minded to grant, the siting and design of a midden should be conditioned. The PA would thereby be afforded the opportunity to control such handling in the interest of safeguarding residential amenity.
- 7.23. The 4 no. buildings proposed for retention are of utilitarian design. Insofar as they are finished in blockwork and feature timber eaves, variously, render and painted finishes should be specified. Again, in the event that the Board is minded to grant, such finishes could be conditioned.
- 7.24. I conclude that, subject to conditions, the proposal would be compatible with the amenities of the area.

#### **(iv) Access**

- 7.25. The applicant has not made explicit the type and number of vehicle movements that are generated by his stud farm. The appellants express the concern that traffic could increase. Likewise, he has not made explicit the means of access to the site that he would use. In this respect, the appellants report that he used the new site entrance to the north-west of his lands during the construction phase. They also report that he constructed an informal road between this entrance and the site and so they ask if he intends to continue using this road during the operational phase. They further ask if he needs retention permission for it.
- 7.26. During my site visit, I observed that the site entrance to the north-west was gated and locked, and electric fencing crisscrossed the accompanying informal road. Accordingly, it did not appear to be in use. Whether this road requires retention permission in its own right is a question for the PA. The submitted site layout plan (drawing no. 3004) indicates the existence of an "old track". However, its alignment both coincides and diverges from that of the informal road. In order to avoid reliance upon this road, if the Board is minded to grant, then it should attached a condition requiring that the southern road only be used to access the site.

- 7.27. During my site visit, I accessed the site via the means of access to the south from Kingston Road. This road is of two-lane width initially, following which it is of single lane width. It enjoys reasonable forward visibility towards and away from a dogleg in its alignment. At present the road affords access to three dwelling houses, including the appellants', and the site itself. Sightlines at its junction with Kingston Road for egressing vehicles are satisfactory.
- 7.28. I recognise that the absence of information on the type and number of vehicles is a gap in the applicant's submission. That said, if it is assumed that the southern road is in use, then the appellants have not reported any particular difficulties with increased usage to date. I note the presence of a standard size horse box in the applicant's photograph no. 10 (drawing no. 3020). I note, too, that the size of the stud farm is such that the likelihood of traffic generation leading to congestion on the southern road is remote. In these circumstances, I do not consider that objection on traffic grounds is warranted.
- 7.29. I conclude that traffic generated by the stud farm is likely to be capable of being accommodated on the southern road to the site.

**(v) Water**

- 7.30. The applicant states that the site has an existing connection to the public water mains supply. He also states that surface water run-off from roofs would discharge to soakaways, which would be designed in accordance with BRE Digest 365. (The yard areas are surfaced with gravel and so they are permeable). Under the OPW's flood maps, the site is not shown as being the subject of any formally identified flood risk.
- 7.31. The applicant does not envisage the need for human wastewater disposal on the site. While he has not made explicit how horse manure would be handled, the need for a midden could, if the Board is minded to grant, be made the subject of a condition, to ensure that it is sited in a position that would be compatible with the appellants' amenities. In this respect, they express concern that run-off from such waste might enter their adjoining residential property. However, as their property is generally at a higher level than the applicant's yards, these concerns appear to be misplaced.
- 7.32. I conclude that, subject to the conditioning of a midden, the proposal would not raise any water issues.

## **(vi) Appropriate Assessment**

- 7.33. The site does not lie in nor beside a European site, and it is not accompanied by any watercourses. Under the proposal, 4 no. new agricultural buildings would be retained. While the arrangements for the disposal of horse manure have not been made explicit by the applicant, as there is no source/pathway/receptor route(s) between the site and the nearest European sites, i.e., Galway Bay Complex SAC (000268) and Inner Galway Bay SPA (004031), I am confident that neither they nor any other European sites would be affected by the proposal. Accordingly, no Appropriate Assessment issues would arise.
- 7.34. Having regard to the nature, scale and location of the proposed development, the nature of the receiving environment, and proximity to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. That retention permission be refused.

## **9.0 Reasons and Considerations**

Having regard to the “R” residential zoning of the site and the surrounding lands in the applicant’s ownership in the Galway City Development Plan 2023 – 2029, it is considered that the proposed retention of four newly constructed agricultural buildings on the site would prejudice the fulfilment of the “R” residential zoning objective of the site and these lands, as the agricultural buildings are critical to the applicant’s stud farm, which represents both an intensification of the agricultural use of his lands and the reinforcement of a non-conforming use of them under the “R” residential zoning. The retention of these permanent buildings would, therefore, contravene the “R” residential zoning objective, and, as such, it would 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.

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Hugh D. Morrison  
Planning Inspector

22<sup>nd</sup> August 2023