



An
Bord
Pleanála

Inspector's Report ABP-317590-23

Development	Retention for onsite facilities and permission for new boundary wall.
Location	Carrigeen, Stradbally, Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	22691
Applicants	Furlong Equipment Services Ltd
Type of Application	Retain
Planning Authority Decision	Grant Retention
Type of Appeal	Third Party
Appellant	Imelda Furlong
Date of Site Inspection	15 th December 2023
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located at Carrigeen, Stradbally, Co. Laois. The site is on a rural road, east of the M7, between the villages of Stradbally and Emo, north east of Portlaoise. The site is a narrow, roughly rectangular strip of ground with the long axis along the public road. It is elevated with reference to the public road with a slight fall to the entrance at the south eastern end which joins the public road at an oblique angle and via a ramp.
- 1.1.2. The site is occupied by a number of buildings, three of curved roof hayshed type, one with a lean-to attached, and an older more traditional outhouse. The containers, the subject of the application are located adjacent to the roadside boundary. A yard area around and within which the buildings are located is used for maintenance, repair and storage of farm equipment / vehicles of all types. Boundary walls surround the site and define the road boundary. The roadside boundary is the subject of this application. Immediately adjoining and formerly associated with this building complex and yard, there is a two storey house set back from the road.
- 1.1.3. The road to the front of the site is a busy local road.
- 1.1.4. The site is given as 0.3084ha.

2.0 Proposed Development

- 2.1.1. The proposed development is described in the notices as permission for new boundary wall and associated site works and retention permission for onsite welfare facilities including an office, storage container units and associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decision, dated 27th June 2023, was to grant permission, subject to 12 conditions, including:

No part of the proposed development shall encroach, oversail or otherwise physically impinge upon any existing property save with the prior written agreement of the owner(s).

All public and private property shall be adequately protected at all times particularly during demolition and construction works.

Any damage caused to the adjoining public thoroughfare shall be made good at the developer's expense to the satisfaction of the planning authority.

Only clean uncontaminated surface water from the development shall be discharged to the surface water system.

The development shall not interfere with or impair the operation of any existing surface water drainage system or land or roadside drainage currently facilitating the application site. No run-off shall be allowed on to the public road.

Clean run-off shall be managed within the curtilage of the landholding via suitably sized soakaways designed in accordance with BRE Digest 365 – Soakaway Design. Contaminated storm water shall not be allowed to discharge to any storm water drain, watercourse, or to the on-site soakaways. Inspection manhole chambers for monitoring storm water quality shall be provided between each interceptor and the point of discharge to the relevant soakaway.

Reason: To prevent interference with existing land or drainage and in the interests of proper development and of sustainable drainage of the catchment.

Any external lighting shall be cowled and directed away from the public roadway and adjoining properties.

No floodlighting shall be erected without prior planning permission.

In the interests of traffic safety and residential amenity.

During the construction stage of the proposed development, The developer shall comply with the document titled "Best Practice Guidelines for the Preparation of Resource & Waste Management Plans for Construction and Demolition Projects" published by the EPA.

During the development works, the developer is not to permit any material from the site to be spread or deposited along the public roadway. The developer shall be responsible for maintaining the adjoining public thoroughfare and properties in a neat, tidy and safe condition.

In the interests of the reduction and best practice management of construction waste from the proposed development, public health, pollution control and traffic safety.

Developer is required to consult with ESB regarding any overhead power line prior to the commencement of any work on this development.

With the exception of the hedge to be removed, all remaining boundary screening shall be retained and not removed save with the prior written consent of the planning authority.

No material change of use or intensification of use shall take place without prior planning permission.

All overground fuel/chemical storage tanks provided shall be adequately bunded to protect against spillage and leakage etc. Bunding shall be impermeable and shall be capable of retaining a volume equal to 1.6 times the capacity of the overground storage tank it is being provided for. Filling and off-take points shall be located within the bunded area.

No advertising signage.

Development contribution.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The first planning report, dated 6th January 2023, recommending further information, which issued, includes:

- The applicant has stated that the two on site workshops and two machinery sheds predate the Planning and Development Act 1963. The applicant states that the buildings were built pre-1963 and used as a contract farming business, workshops and stores. An affidavit and photos have been submitted by the applicant in relation to same. However, no definitive evidence of same has been submitted.
- The site has been officially out of the applicant's father's name (who ran the business) since 2001 and the applicant states that Furlong Equipment Services Limited was established in January 2017.

- The 'existing machine garage' located centrally on the site was previously used for the storage of hay and is now used for commercial operations as part of the on-site operations. Furthermore, the difference between the google street view photos and the existing site photos shows that a significant amount of machinery is now being stored on site. This all comprises a change of use. There now appears to be a sales element to the proposal which would be a material change to the works described as pre-dating 1963.
- The applicant states that the buildings were built pre-1963 and used as a contract farming business, workshops and stores. The applicant initially commenced as a contract spraying and farm relief works business and now specialises in sprayers for sale, service, maintenance and repair at this location. Re. the workshops: welding, farm maintenance and repair of machinery has been carried out at this location since erected.

3.2.3. Further Information request

3.2.4. A further Information request issued 11th January 2023.

3.2.5. A further Information response was received 7th June 2023. It includes:

Per letter of 25th May 2021 Laois County Council accepted that the business had been in continuous operation for a period in excess of 7 years. Hay bales were utilised as temporary walls until such time as funds became available to replace them with a more permanent structure.

The shed has always been used for commercial operations as part of the on-site operations.

3.2.6. Other Technical Reports

3.2.7. Waste Management & Environmental Protection, 22nd December 2022, conditions:
1) surface water, 2) no animal housing.

3.2.8. Water Services, 29th November 2022, conditions.

3.2.9. Second planning report, dated 23rd June 2023, recommending permission, which issued, includes:

Responses accepted.

3.3. Third Party Observations

3.3.1. Third party observations on the file have been read and noted.

4.0 Planning History

Referred to on the file:

Incomplete planning applications

Pre-planning discussions

A visit from an enforcement officer (s).

No other planning history is given.

5.0 Policy Context

5.1. Development Plan

5.1.1. Laois Development Plan 2021-2027 is the operative plan. Relevant provisions include:

Policy objectives:

RL4 Support the expansion, diversification and intensification of agriculture and the agri-food sector by facilitating appropriate related development subject to environmental and planning considerations.

RL 12 Reconcile the need for resource-based economic activities to conduct a reasonable operation and the needs of residents in rural areas to access a good quality of life and access to rural areas.

5.2. Natural Heritage Designations

5.2.1. The River Barrow and River Nore SAC (site code 002162) 4.5km straight line distance to the south east, is the nearest Natura site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity 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

- 6.1.1. Liam Ryan Architectural Design & Planning has submitted the appeal on behalf of Imelda Furlong. The grounds include:

- The yard in which the proposed retention development is located was the farmyard for a 21.13ha or 76.95ac farm owned by William Furlong. Some 3.374ha has been transferred during the period May 2001 to September 2019. The current area is 25.75ha or 63.66 ac. There are other lands in a different folio, which brings the total area of the farm to approx. 40ha. or 100 ac.
- The adjacent farmyard has since been transferred to Imelda Furlong's son Martin.
- Noel Furlong, the owner of Furlong Equipment Services Ltd was born in 1978.
- William Furlong, husband of Imelda Furlong and father of Noel Furlong died in 2006. The farm was then owned by Imelda Furlong.
- The planning history is outlined – 21/710 – incomplete; 21/866 – incomplete. The planner's report states that on viewing Google street view images 'the images show a substantially different use on site compared to that which currently exists'. Google street view images - October 2009 when the images show a standard farmyard with bales of hay or straw in the barn.
- Imelda Furlong states that Noel Furlong commenced the commercial or business activity in this farmyard in 2014.

- Q 10 on the application form was incorrectly answered – that Furlong Equipment Services Ltd is the owner of the site. This is incorrect. Imelda Furlong is the owner.
- Laois Co Co relied on 3 documents which contain factual inaccuracies – the Affidavit, the letter dated 25/05/2023, and the letter from the applicant's solicitors.
- In the Affidavit Noel Furlong swears that the commercial activity had been ongoing in the yard since before 1963, but he wasn't born until 1978.
- In the letter dated 25/05/2023 Noel Furlong states that his late father used the yard for commercial use prior to 1963. Imelda Furlong as the sole owner since 2006 states that there was no commercial activity in her farmyard until Noel Furlong started in or about 2014. The business carried out in the yard, in terms of sale of machinery, has to be regarded as unauthorised development.
- In response to the letter from the applicant's solicitors – Nooney & Dowdall, they provide a letter from Imelda Furlong's solicitors Rolleston McElwee, which states that there is no agreement re. the transfer of any property from Imelda Furlong to Noel Furlong.
- Neither Noel Furlong nor Furlong Equipment Services Ltd have Imelda Furlong's permission to carry on any business in her farmyard.
- They have no consent to erect a boundary wall and associated site works or to retain structures on the site.
- They do not understand why Laois Co Co ignored the report of the planner in 2022 regarding the google street view; or rely on an affidavit swearing knowledge by Noel Furlong, from a time before he was born.
- Folio maps are supplied. A solicitor's letter supplied states that Imelda Furlong is the owner of the land and correspondence filed with the planning authority stating that terms of agreement were imminent in respect of the dealing with title issue, is not correct.

6.2. Applicant Response

6.2.1. DKA Chartered Architectural Technologist has submitted a response on behalf of the applicant.

- All the issues raised were previously addressed.
- The applicant claims ownership. Imelda Furlong has been registered as owner by virtue of a Grant of Probate. The applicant claims possessory rights and beneficial title.
- The applicant's sworn affidavit to events before he was born is supported by photographic evidence and historical data.
- A sworn affidavit by Dan Keane is submitted in support of the applicant's claim that his late father engaged in commercial contractual activities prior to 1963,
- Following the passing of his father in 2006 the applicant continued his father's contracting business from these premises. The business to which the applicant refers is a natural expansion of the contracting business. There was no break in commercial activities in the farmyard between 2006 and 2014.
- At the time of the solicitor's letter to Laois Co Co it was the applicant's genuine belief that the major issues between the parties were close to being resolved. The applicant has continually claimed possessory rights
- The applicant claims possessory rights and beneficial title since 2006. He has continued his late father's contracting business and subsequently expanded this business to include the sale of equipment.
- Imelda Furlong was aware of the commercial operations between 2006 and 2014. The applicant's sister undertook the accounting c2007/2008 and continued in this role until 2018/2019.
- No objection was made by Imelda Furlong to the welfare unit being installed in 2018 until retention was sought 3 years later.
- The use of the land has been accepted by Laois Co Co.

- On foot of a submission at the meeting with the enforcement officers on 24th May 2021, the only concern was the welfare facility and storage containers.
- Laois Co Co were satisfied that all other aspects of the business were statute barred and they have proven that the commercial aspect of the business had existed prior to 1963 at this location.
- The response is accompanied by various enclosures including a sworn affidavit by Daniel Keane, owner and project manager of Dan Keane Architecture and a native of Rathleague whose father Mr Frank Keane worked for Mr Furlong's late father William from 1957 to 1960, which states that the sheds at Corrigeen were erected prior to the enactment of the 1963 Act and were also used for commercial purposes before this time.

6.3. **Planning Authority Response**

6.3.1. No response has been received from the planning authority.

7.0 **Assessment**

7.1.1. I consider that the main issues which arise in relation to this appeal are appropriate assessment, the principle of the development, and the ownership dispute, and the following assessment is dealt with under those headings.

7.2. **Appropriate Assessment**

7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that no appropriate assessment issues arise and 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.

7.3. **Principle of development**

7.3.1. Policy objective RL4 of the Laois Development Plan 2021-2027 supports the expansion, diversification and intensification of agriculture and the agri-food sector by facilitating appropriate related development subject to environmental and planning considerations.

- 7.3.2. The applicant has satisfied the planning authority that commercial development was established at this location prior to the enactment of the Planning and Development Act 1963. That development appears to have involved contract working on the farms of others.
- 7.3.3. It is stated by the appellant that the business carried out in the yard, in terms of sale of machinery, has to be regarded as unauthorised development.
- 7.3.4. The applicant states that a natural expansion of the contracting business has taken place.
- 7.3.5. It is easy to envisage natural expansion of a contracting business into sales and servicing. As many farmers now have their own machinery, sales and servicing has become a business that didn't exist when the commercial operation began at this location. It is not clear from the details on the file when the sales and servicing activity became established on this site.
- 7.3.6. The site, given as 0.308ha, appears currently to be operating at or beyond its capacity, based on the amount of plant stored on site on the date of inspection.
- 7.3.7. The proposed development includes a new boundary wall and associated site works and retention permission for onsite welfare facilities including an office, storage container units and associated site works. The subject application includes retention of three container storages.
- 7.3.8. Regarding the retention of the welfare facilities and office on the site, they are to be retained in an existing building. An accompanying letter from the business which services the underground waste water storage tank is provided. In my opinion these facilities, which serve the staff, are a necessary part of the business and their retention should be permitted subject to a condition requiring the regular submission of a copy of the contract arrangements for servicing the wastewater tank.
- 7.3.9. The boundary wall has now been completed. It's retention is also reasonable. In my opinion it serves the established business and does not facilitate intensification.
- 7.3.10. The Board must consider whether or not the additional storage would facilitate an expansion of the business, beyond the capacity of the site. On balance I consider that the retention of these containers would facilitate such expansion and should not be permitted.

7.4. Ownership Dispute

- 7.4.1. Ownership of the site is only relevant to the Board's consideration of the application in so far as it needs to be established that the applicant has sufficient interest in the property to make the application and that anyone else with an interest in the property is aware of the application. The Board has no other function or adjudicating powers in this regard.
- 7.4.2. The applicant claims possessory title. The registered owner is the objector. I am satisfied that the applicant has sufficient interest in the property to make the application and that the registered landowner's awareness of the application / appeal is sufficient.

8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that planning permission for retention of the storage containers be refused for the following reasons and considerations and that planning permission for retention of the welfare facilities and the boundary wall be granted for the following reasons and considerations and in accordance with the following conditions.

9.0 Reasons and Considerations

Reason No 1

Reason for refusal

Retention of the storage containers would facilitate intensification of use of this constrained site which has reached the limits of expansion of use, further intensification of use of the site would be contrary to the proper planning and sustainable development of the area.

Reason No 2

Reason for permission

The retention of the welfare, office facilities and wall, which are ancillary to the established commercial use of the site in accordance with the following conditions,

would not detract from the amenities of the area and would accord 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 by the further plans and particulars received by the planning authority on the 7th day of June 2023, 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>For the duration of use of the wastewater storage on site, a contract from an operator of a wastewater collection service for its maintenance, shall be submitted annually to the planning authority for written agreement.</p> <p>Reason: In the interest of orderly development.</p>
3.	<p>Proposals for the disposal of surface water, shall be submitted for the written agreement of the planning authority within three months of the date of this order.</p> <p>Clean run-off shall be managed within the curtilage of the landholding via suitably sized soakaways designed in accordance with BRE Digest 365 – Soakaway Design.</p> <p>Runoff shall be disposed of via petrol interceptors.</p> <p>Contaminated storm water shall not be allowed to discharge to any storm water drain, watercourse, or to the on-site soakaways.</p>

	<p>Inspection manhole chambers for monitoring storm water quality shall be provided between each interceptor and the point of discharge to the relevant soakaway.</p> <p>The development shall not interfere with or impair the operation of any existing surface water drainage system or land or roadside drainage currently facilitating the application site. No run-off shall be allowed to flow onto the public road.</p> <p>Only clean uncontaminated surface water from the development shall be discharged to the surface water system.</p> <p>Reason: To prevent interference with existing land or drainage and in the interests of proper development and of sustainable drainage of the area.</p>
4.	<p>All overground fuel/chemical storage tanks provided shall be adequately bunded to protect against spillage and leakage etc. Bunding shall be impermeable and shall be capable of retaining a volume equal to 1.5 times the capacity of the overground storage tank it is being provided for. Filling and off-take points shall be located within the bunded area.</p> <p>Reason: To prevent water pollution.</p>
5.	<p>Any damage caused to the adjoining public thoroughfare shall be made good at the developer's expense to the satisfaction of the planning authority.</p> <p>Reason: In the interest of orderly development.</p>
6.	<p>No floodlighting shall be erected without prior planning permission.</p> <p>Any external lighting shall be cowled and directed away from the public roadway and adjoining properties.</p> <p>Reason: In the interests of traffic safety and residential amenity.</p>

7.	<p>No advertising signage shall be erected on the site, except in accordance with a further planning permission.</p> <p>Reason: In the interests of traffic safety and rural amenity.</p>
8.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</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.

Planning Inspector

12th January 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	new boundary wall and associated site works and retention permission for onsite welfare facilities including an office, storage container units and associated site works		
Development Address	Carrigeen, Stradbally, Co. Laois		
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	/
		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	/		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	/	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: _____ **Date:** _____

Appendix 2 Photographs

Appendix 3 Laois County Development Plan 2021-2027, extracts