



An
Bord
Pleanála

Inspector's Report

ABP-317905-23

Development	The retention of a slurry tank and all associated site works
Location	Curraheen, Tralee, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	22/1205
Applicant(s)	Michael Quirke
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	1. Timothy Foster 2. Peter Sweetman
Observer(s)	None
Date of Site Inspection	30 th May 2024
Inspector	Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.355 hectares and is located within the rural townland of Curraheen, County Kerry, which is located approximately 6km west of the town of Tralee. The site comprises of an existing yard and barn.
- 1.2. Access to the site is via a cul-de-sac single carriageway road taken off the national road, N-86. There is also an agricultural gate directly off the N86 to the south of the yard. The site is bounded by one-off rural housing to the south, west and east of the site with agricultural lands to the north.
- 1.3. The Tralee Bay and Magharees Peninsula, West to Cloghane SAC (Site Code 002070), also a proposed Natural Heritage Area, is located approximately 400 metres to the northwest and to the north of the site. The Tralee Bay Complex SPA (Site Code 004188) is located approximately 750 metres north of the site. The Slieve Mish Mountains SAC (Site Code 002185) is located approximately 300 metres south of the site.

2.0 Proposed Development

- 2.1. Planning permission is sought to retain a slurry tank within an existing farmyard. The depth of the tank is 2.285 metres and is approximately 21 metres in length and 4.1 metres in width. The slurry tank is unroofed with slats on top and the area above the tank is bounded by an agricultural fence and gate constructed to a height of 2 metres.
- 2.2. The application is accompanied by a letter from McQuinn Consulting which outlines the capacity calculations of the slurry tank and the stocking rates on the lands.

3.0 Planning Authority Decision

3.1. Decision

In considering the application, Kerry County Council (the Planning Authority) sought further information in relation to the following:

- They requested the applicant to demonstrate that there was adequate capacity in the slatted tank to cater for all the organic fertiliser likely to be generated on the farmyard, with sufficient spread lands available;
- They requested clarification on whether the applicant proposed to roof the structure; and
- They requested how the applicant intends to deal with the odour nuisance issue.

The Planning Authority decided to grant permission by Order dated 16th August 2023, subject to 4 no. mainly standard conditions including a condition requiring the employment of an odour specialist to establish remediation measures in the event of odour complaints. A financial contribution was considered not applicable to slurry tanks and was not attached.

3.2. Planning Authority Reports

Planning Reports

- There are a total of 2 no. Area Planner's reports which assessed the principle of the development, traffic, effluent disposal, residential amenity, visual impact, EIA preliminary examination and water quality. An appropriate assessment screening was undertaken by the Biodiversity Officer. Further information was requested and considered acceptable to the Area Planner. The Area Planner's reports, which are endorsed by the Senior Executive Engineer, recommended that permission be granted subject to 4 conditions.

Other Technical Reports

- Environment Section (Reports dated 3rd January 2023 and 15th August 2023) – They requested further information in relation to the capacity of the slurry tank, the issue of odour and whether the applicant proposed to roof the structure. After the further information response, Environment Section recommended a grant of permission, subject to 4 conditions.
- Biodiversity Officer (report dated 23rd January 2023) – An Appropriate Assessment screening was undertaken and concluded that the development has not significantly affected any European Site. With regards to spreading of

slurry, the Ecologist was satisfied that this was regulated under separate legislation and was outside the planning system.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland – They had no observations to make.

3.4. Third Party Observations

A third-party submission was received from Mr. Peter Sweetman who raised issues in relation to the assessment of the planning merits of the application, the environmental impacts of the development, Habitats Directive responsibilities with reference to CJEU Cases C323/17 and 258/11 and compliance with the Water Framework Directive.

A third party submission was also received from Mr. Timothy Foster who raised issues in relation to, inter alia, a change of use of the yard, animal welfare, unauthorised development, the location of the development within a disused railway line, concerns regarding traffic, noise, vibration, odour and lighting, the disposal of slurry, foot and mouth and health/environmental concerns, the visual amenity of the area, devaluation of property and concerns regarding a traffic hazard.

4.0 Relevant Planning History

PA ref. 04/1460 (site located south of the subject site)

James Quirke was granted permission to erect a bungalow.

PA ref. 03/1147 (Site located adjacent to subject site)

Josephine Quirke was granted permission to demolish a dwelling and replace with a new dwelling and wastewater treatment system.

PA ref. 00/3741 / ABP Ref. PL 08.126432 (Site located adjacent to subject site)

James Quirke was refused permission to construct dwelling with garage and wastewater treatment system. The reasons for refusal were in relation to a traffic hazard taking access directly off the national road, concerns in relation to the wastewater treatment system onsite and to the location of the site in an area lacking public and community services.

5.0 Policy Context

5.1. Development Plan

- Kerry County Development Plan 2022-2028

Objective KCDP 9-39

Support and facilitate the thematic objectives outlined in “Our Rural Futures”, rural development policy 2021-2025, to strengthen economic activity and employment in rural areas.

Objective KCDP 9-52

Support and facilitate the implementation of the strategic objectives of Food Vision 2030 – A World Leader in Sustainable Food Systems to sustainably develop the agricultural and food sectors that contribute enormously to the economic development of rural areas.

Objective KCDP 9-53

Facilitate and support the development of sustainable agricultural practices and facilities within the county, subject to normal planning and environmental criteria and the development management standards contained in Volume 6 of this plan.

Objective KCDP 9-55

Facilitate the sustainable modernisation of agriculture and to encourage best practice in the design and construction of new agricultural buildings and installations to protect the environment, natural and built heritage and residential amenity.

Objective KCDP 9-56

Ensure agricultural waste is managed and disposed in a safe, efficient and sustainable manner having regard to the environment and in full compliance with the European Communities Good Agricultural Practice for the Protection of Waters Regulations (2010-2020) and any subsequent updates and relevant best practice guidelines.

Objective KCDP 9-62

Ensure the economic benefits associated with promoting the County's agri-food sector are balanced with due consideration for the conservation and protection of the rural environment.

Objective KCDP 11-77

Protect the landscapes of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

Objective KCDP 11-78

Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.

Objective KCDP 11-79

Preserve the views and prospects as defined on Maps contained in Volume 4.

Objective KCDP 11-81

Prohibit developments that have a material effect on views designated in this plan from the public road or greenways towards scenic features and/or public areas.

Objective KCDP 14-49

Protect all existing or historic rail lines and associated facilities from redevelopment for non-transport related purposes to protect their future potential use as an operational transportation network or for cycle/walking routes.

5.2. National Policy

- Climate Action Plan 2024
- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030
- Department of Rural and Community Development's Our Rural Future: Rural Development Policy 2021-2025
- Department of Agriculture, Food and the Marine's Food Vision 2030
- Department of Agriculture, Food and the Marine's Ag Climatise A Roadmap towards Climate Neutrality

- Nitrates Action Programme (NAP) 2022-2025

5.3. Regional Policy

- Regional Spatial and Economic Strategy for the Southern Region

5.4. Other Guidance

- European Commission's 'Farming for Natura 2000, Guidance on how to support Natura 2000 farming systems to achieve conservation objectives, based on Member States good practice experiences (2018)

5.5. Natural Heritage Designations

The subject site is not located within any designated site. The Tralee Bay and Magharees Peninsula, West to Cloghane SAC (Site Code 002070), also a proposed Natural Heritage Area, is located approximately 400 metres to the northwest and to the north of the site. The Tralee Bay Complex SPA (Site Code 004188) is located approximately 750 metres north of the site. The Slieve Mish Mountains SAC (Site Code 002185) is located approximately 300 metres south of the site.

5.6. Environmental Impact Assessment (EIA)

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a preliminary examination or screening assessment. Refer to Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

Two third party appeals were lodged to the Board opposing the Planning Authority's (PA) decision; by Mr. Timothy Foster on 30th August 2023 and by Mr. Peter Sweetman on 5th September 2023.

Mr. Timothy Foster's grounds of appeal can be summarised as follows:

- The barn onsite is not fit for purpose and is in a state of disrepair.
- The development is within a disused railway and therefore contravenes KCDP 14-44.
- There is a stagnant odour in the area, especially in winter. Previous complaints have been made in relation to spreading and agitation. Condition 2(d) of the PA's grant is meaningless as it does not address the odour problem. The further information submitted by the applicant only states what he is already doing.
- There is a metallic banging noise from the movement of cattle which is affecting the Appellant's sleep. The gated holding area is less than 15 feet to the house. Other noise sources include stationary vehicles being left idling, the tractor during agitation being on full power and the operation of noisy equipment. This is having a negative impact on mental health and depreciating the value of properties in the area.
- There is concern with the spread of foot and mouth disease due to the proximity of the site to domestic properties.
- There is a poorly constructed culvert downhill of the slurry tank where bales are being stored above and therefore not complying with the minimum 10 metres from any watercourse.
- The entrance off the N-86 is unauthorised. The applicant has built pillars and gates sometime after July 2019 before building the slurry tank. This does not comply with KCDP 14-28.
- With regards to condition no. 4, the existing hedgerow is not native and would normally not be allowed. It is overgrown and not providing screening. The existing hedge does not meet the ACRES standard for capturing ammonia. The boundary should be upgraded to a better standard to stop existing and potential nuisances.
- The site is exposed and the activity is offensive to look at. The tank is above ground unnecessarily. It is raised above the height of the boundary wall and is prominent and obtrusive.

- The applicant's father sold the lower barn and 20 acres to the applicant's brother. The upper barn was used as a hay barn and the lower barn was used as a cattle barn. The best location should be next to the lower barn or on site 04/1460.
- There are no conditions to plaster the barn walls or plaster and cap the entrance onto the N-86.
- A number of recommendations are provided to address the existing nuisances such as further tree planting, no development at a set distance from the boundary and the construction of a wall along the western boundary of the slurry tank.
- A number of photographs are provided in relation to the site and adjoining lands.

Mr. Peter Sweetman's grounds of appeal can be summarised as follows:

- No evidence that slurry has been spread in the past according to the Nitrates Regulations. No returns from the department of agriculture have been submitted. The Nitrates Regulations have no relevance to the Habitats Directive.
- The test for appropriate assessment cannot have lacunae but must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned.
- There is no need to establish what effect, merely necessary to determine that there may be such an effect.

6.2. Applicant Response

The Applicant addresses the grounds of appeal as follows:

- With regards to the historic railway, the land was purchased by the applicant's grandfather from CIE in 1963. A copy of the conveyance letter is attached.
- A property registration authority map is provided showing an existing building within the footprint of the old historic railway line.

- The tank has been installed at the required height to collect effluent from existing sheds. Due to the slope of the ground, it appears higher from the lower side.
- In relation to odour, the applicant refers to the unsolicited further information submitted on 4th January 2023. The tank is situated to the east of Mr. Foster's dwelling with the prevailing wind coming from the west which will minimise odours/noise.
- A letter is provided from McQuinn Consulting dated 18th July 2023 detailing measures to be taken to reduce smells and odours. However, this is a working farmyard and a certain amount of noise/odour is to be expected.
- The applicant's tractor is a small Case International 1990 and is never at full power when agitating. Works carried out are within working hours, taking into account neighbouring properties in the vicinity.
- Alan Quirke, a neighbouring farmer, is not a relation to the applicant's family. There is only one farmyard on this farm. From 1987 to the present day the farm has been a beef enterprise. A letter from Lee Strand is provided showing evidence of the working farm since 1960.
- Many of the photos attached to the appeal are historic photos and are irrelevant in the context of the current application.
- A letter from McQuinn Consulting is provided that states the unroofed facility has 116m³ of slurry storage for the 18-week winter period. The applicant intends to keep 20 cattle over the coming winters and this facility has sufficient slurry storage for these animals which complies with the Nitrates regulations requirements.
- The applicant uses a product called Slurry King Cattle with the cattle slurry which significantly reduces the volume of ammonia generated and therefore reduces the odour from the cattle slurry when agitating and applying this slurry to the adjoining 13 hectares of land which is usually applied twice per year.
- The lands are currently maintained in good agricultural and environmental condition.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the planning authority and having inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Use of Farmyard
- Residential Amenity
- Public Health (New Issue)
- Visual Amenity
- Other Issues

Use of Farmyard

7.2. The Appellant states that the existing shed on the subject site was previously used as a hay barn and a barn to the north of the site was used for cattle. I note that this barn is located approximately 290 metres to the north of the subject site. I note that the Applicant's response to the grounds of appeal states that there is only one farmyard on this farm and it has been a beef enterprise since 1987. It is stated that the letter from Lee Strand shows evidence that this was a working farm since 1960.

7.3. Having reviewed this letter, I do not consider that this provides sufficient evidence that the subject site and barn was used for housing cattle. Furthermore, I note from Google Street View (taken May 2011) that the subject barn and yard area was being used for the storage of machinery, dry bales and other materials and structures. Additionally, having reviewed the historic mapping from 2011-2013 and 2013-2018 on the National Monuments Service's Historic Environment Viewer, I note that the yard area was being used to store dry bales during these years. There was no evidence of a slurry tank or housing of cattle onsite.

Having regard to the above, it is my view that the slurry tank to be retained and associated use of the area to enclose cattle clearly represents a change in the use of the site and, therefore, has the potential to give rise to new impacts on surrounding amenity.

Residential Amenity

- 7.4. I note that the Appellant's primary concern is with the proximity of the slurry tank to his dwelling in terms of odour, noise and vibration impacts. I note that the Appellant's dwelling is located approximately 19 metres west of the slurry tank and the party boundary is located approximately 15 metres west from the tank. Additionally, I note that the immediate area is characterised by a relatively high density of rural residential properties to the north, south, east and west of the subject site.
- 7.5. The Appellant states that the sources of noise and vibration include the movement of cattle and the idling and stationary machinery. I note the Applicant's response including the statement that all works are carried out within working hours.
- 7.6. I acknowledge that there would have been a level of noise associated with the use of the shed and yard as a storage area in the past. Therefore, I have no serious concerns with the impact of machinery noise in this regard as all works would be carried out during working hours. However, I do have serious concerns with the noise impact associated with the enclosure of cattle within the area above the slurry tank, due to the close proximity of the area to a number of residential properties.
- 7.7. Furthermore, with regards to the odour impact, I have serious concerns with the unroofed nature of the slurry tank in such close proximity to a number of residential properties. I note that the Applicant's response to the grounds of appeal which states that due to the prevailing wind this will minimise the odour impact, however, due to this being a working farmyard a certain level of odour is to be expected.
- 7.8. However, in my view, the operation of the slurry tank associated with cattle will have a significantly increased odour impact in comparison to the storage of dry bales onsite. The proposed tank is unroofed, and the Board should note that section 4.7 of the Department of Agriculture, Food and the Marine's (DAFM) S.123 Minimum Specification document recommends that all external tanks are covered with a solid cover for, inter alia, the control of odours.
- 7.9. Therefore, having regard to the high density of residential properties within the area, to the proximity of the slurry tank and enclosed cattle area to the adjoining residential properties, and to the unroofed nature of the slurry tank, it is my view that the development to be retained would have an adverse impact on the residential amenity

of the area in terms of noise and odour. I recommend that permission should be refused on this basis.

Public Health (New Issue)

- 7.10. Whilst not raised by the third-party Appellants, I have serious concerns with the slurry tank in terms of public health due to the submitted capacity calculations, its unroofed nature and proximity to residential properties and potential water sources. Organic fertiliser cannot be spread in County Kerry between 15th October and 15th January (as outlined in Schedule 4 of the European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended, therefore it is critical that there is sufficient capacity within the tank.
- 7.11. The Applicant's herd number appears to fluctuate over the winter period, however, it is stated that the Applicant intends to keep c. 20 cattle over the coming winters. I note the capacity calculations provided by McQuinn Consulting in the letter dated 18th July 2023 are based on a tank depth of 2.74 metres. However, I note from the submitted tank elevation/section drawing that the depth of the tank is 2.285 metres. Whilst their calculations have taken into account an average rainfall in Kerry of 45mm weekly and the 300mm freeboard allowance, I have concerns regarding the capacity of the installed tank.
- 7.12. Additionally, the Applicant should note that Section 5.1 of the DAFM S123 Minimum Specifications states that such a facility within a new farmyard shall not be located within 60 metres of a public/private water supply source. I note that the application does not provide any information on any domestic water supplies in the area. Therefore, having regard to this omission of information, I am not satisfied that there is no risk to public health.
- 7.13. Whilst associated with the proximity to residential properties, these concerns may be regarded as a new issue and the Board may wish to seek the views of the parties. However, having regard to the other substantive reason for refusal due to the proximity of the development to residential properties and associated noise and odour impacts set out below, it may not be considered necessary to pursue the matter.

Visual Amenity

- 7.14. I note the Appellant's concerns regarding the visual impact of the development and the reference to the previous reasons for refusal by the Board on appeal ref. PL 08.126432, which I note was an application and appeal in relation to a dwelling.
- 7.15. The development to be retained is within an existing yard area. I note that the subject site is located within a Visually Sensitive Area under the Kerry County Development Plan 2022-2028 (CDP) and is located next to the public road where there are designated Views and Prospects to the north under the CDP. However, having regard to the scale of the development to be retained and to its location next to a shed, I am satisfied that the development will not result in an adverse impact on the visual or scenic amenity of the area. Furthermore, I do not consider that the development would negatively impact the visual amenities from adjoining dwellings due to the scale of the development. Therefore, I consider the development is in accordance with objectives KCDP 11-77, KCDP 11-78, KCDP 11-79 and KCDP 11-81 of the CDP.

I note the third party's concerns regarding condition 4 in that it is not adequate and their request for more/upgraded screening. However, having inspected the site and to the scale of the development to be retained, I am satisfied with the existing level of screening along the public road and along the western boundary of the site.

Other Issues

- 7.16. With regards to the concerns in relation to the historic railway, having inspected the site, to the established yard on site which is under the ownership of the Applicant and to the built-up nature of the immediate area, it is my view that the development to be retained would not contravene objective KCDP 14-49 of the CDP.
- 7.17. The subject site is accessed from the adjoining laneway to the east. I note the Appellant's comments regarding an unauthorised entrance taken off the N-86. I note that Transport Infrastructure Ireland had no observations to make. Notwithstanding this, the Board should note that the matter of enforcement falls under the jurisdiction of the Planning Authority.

8.0 Appropriate Assessment (AA) Screening

- 8.1. I note the concerns of the Appellant regarding the issue of landspreading. However, the Board should note that landspreading does not form part of this application and such process is regulated under the European Union (Good Agricultural Practice for Protection of Waters) Regulations, as amended. The regulations contain specific measures to protect surface waters and groundwater from nutrient pollution arising from agricultural sources. This includes, inter alia, no land spreading within 5-10 metres of a watercourse following the opening of the spreading period (16th January for County Kerry). I note that an Appropriate Assessment was completed as part of Ireland's fifth Nitrates Action Programme (NAP) 2022-2025, which is given effect by the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2022, and concluded that the programme would not adversely affect the integrity of any European Site.
- 8.2. Notwithstanding the above, I have considered the project in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. The subject site is located approximately 400 metres south of the Tralee Bay and Magharees Peninsula West to Cloghane SAC (Site Code 002070), approximately 750 metres south of the Tralee Bay Complex SPA (Site Code 004188) and approximately 300 metres north of the Slieve Mish Mountains SAC (Site Code 004188).
- 8.3. The development comprises the retention of a slurry tank to the north of an existing shed. The site slopes downwards from south to north towards Tralee Bay. I note that the Appellant referred to a culverted stream downhill of the slurry tank where dry bales were being stored, however, I did not note any such hydrological connection onsite on the date of my site inspection. I did note a land drain approximately 160 metres north of the site. Having viewed the Environmental Protection Agency's AA Mapping Tool and having visited the site, I note that there are no direct hydrological connections between the development to be retained or the subject site and the European Sites.
- 8.4. Having considered the nature, scale and location of the project, and notwithstanding my concerns regarding the capacity of the slurry tank set out above, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- Having regard to the absence of any direct hydrological connection from the subject site to any European Site. The nearest drain is located approximately 160 metres north of the site.
- Given the sloping nature of the site northwards to Tralee Bay there is potential for surface water runoff from the development, however, given the distance from the European Sites and the intervening land uses, boundary walls and vegetated buffers, I am satisfied that the potential for the development to adversely affect the European Site and the QI habitat and species to be unlikely.
- Having regard to the distance of the site from the European Sites regarding any other potential ecological pathways.
- No ex-situ effects are likely having regard to the characteristics of the site which comprises of a yard area surrounded by a high density of residential dwellings, and to the presence of a number of agricultural fields between the site and Tralee Bay Complex SPA.
- Having regard to the screening report and determination of the biodiversity officer of the PA.

8.5. I conclude that on the basis of objective information, that the development would not likely have had or would likely have a significant effect on any European Site, either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required. The Board should note that I have not taken into account any measures intended to reduce or avoid any harmful effect on the European Sites.

9.0 Recommendation

I recommend that permission is refused for the following reasons and considerations.

10.0 Reasons and Considerations

1. Having regard to the location of the development to be retained in close proximity to adjoining dwellinghouses and to the unroofed nature of the slurry tank, the Board is not satisfied that the development to be retained would not seriously injure the residential amenity of properties in the vicinity in terms of noise and odour. Therefore, it is considered that the retention of the development 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.

Gary Farrelly
Planning Inspector

11th June 2024

Appendix 1 - EIA Pre-Screening

An Bord Pleanála Case Reference	317905-23		
Proposed Development Summary	Retention of slurry tank and all associated site works		
Development Address	Curraheen, Tralee, County Kerry		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		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			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)
No	X		No EIAR or Preliminary Examination required
Yes			Proceed to Q.4
4. Has Schedule 7A information been submitted?			
No		Preliminary Examination required	
Yes		Screening Determination required	

Inspector: _____

Date: _____

Gary Farrelly