



An
Bord
Pleanála

Inspector's Report

ABP-318239-23

Development	Retention of a machinery shed, silage pit and all other site and ancillary works
Location	Crag, Lahinch, County Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	23/418
Applicant(s)	John Leahy
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Finula Garrahy
Observer(s)	None
Date of Site Inspection	2 nd April 2024
Inspector	Gary Farrelly

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.39 hectares and is located within the townland of Crag, which is located approximately 400 metres south of Lahinch town centre. The site accommodates an existing agricultural farmyard and is bounded by agricultural lands to the west, beyond which are two recorded monuments (Cliff Edge fort refs. CL023-065 / CL023-001) approximately 70-80 metres west/northwest of the site.
- 1.2. The site is immediately bounded by an adjoining dwelling to the north and another dwelling is located to the south of the farmyard, which is under the ownership of the applicant. The site is bounded to the east by the N-67 national road, which is also designated as a scenic route within the Clare County Development Plan 2023-2029. The yard area (i.e. location of silage pit) is located above the level of the public road and the roadside boundary is defined by a dry stone wall and grass verge.

2.0 Development

- 2.1. Permission is sought for the retention of a machinery shed and silage pit. The silage pit is located within the northeast corner of the site and has a stated area of 112sqm. The machinery shed is located to the west of the existing farmyard, has a floor area of 228sqm and is built to a ridge height of 5.6 metres.
- 2.2. It is stated that the source of water supply is an existing connection to the public water mains. It is stated that the existing run-off from the soiled yard is unchanged. Roof water is disposed of to the public drain.

3.0 Planning Authority Decision

3.1. Decision

Clare County Council (the planning authority) decided to grant permission by Order dated 19th September 2023, subject to 5 no. mainly standard conditions including compliance with S123 and S128 specifications and Good Agricultural Practice Regulations 2014. There was no financial contribution attached to the permission as agricultural developments are considered exempt.

3.2. Planning Authority Reports

Planning Reports

The area planner's report assessed the development in terms of public health and residential amenity, architectural and archaeological heritage, enforcement, visual amenities, land zoning, EIA screening and AA screening. The report recommended a grant of permission which was endorsed by the Senior Executive Planner.

Other Technical Reports

- Environmental Assessment Officer (email dated 15th September 2023) – They assessed the impact of the development on the European Sites and found that there were no risks of significant effects and therefore no risk of adverse effects on any European Site (either directly or indirectly), alone or in-combination with other plans or projects.
- Municipal District Office (email dated 29th August 2023) – They had no observations to make.

3.3. Prescribed Bodies

Department of Housing, Local Government and Heritage – They requested that an archaeological post-impact assessment should be carried out as part of further information. The archaeological report submitted with the application is dated 1996 and does not provide any information on the current development.

3.4. Third Party Observations

There was one third party observation that was submitted, by Finula Garrahy, objecting to the application. A number of issues were raised including concerns in relation to the principle of the development on lands zoned as 'open space', visual amenities, the potential impact on archaeology, the potential impact on the Inagh River Estuary SAC and public health.

4.0 Planning History

PA ref. 16/179

John Leahy was granted permission for an extension to an existing livestock slatted unit.

PA ref. 23/2

John Leahy sought permission to retain and complete a new machinery shed and other site and ancillary works. This application was withdrawn.

5.0 Policy Context

5.1. Development Plan

Clare County Development Plan 2023-2029

Open Space

It is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities.

Section 19.5.5 Non-conforming Uses

'Non-conforming uses' are established uses that do not conform to the zoning objectives of the Plan. Generally, the Council will consider reasonable extensions and improvements to premises that accommodate non-conforming uses, provided that it would not be injurious to the amenities of the area and is consistent with the proper planning and sustainable development of the area.

Development Management Guidelines – A1.8 Agricultural Developments

The rural countryside is a natural resource with agricultural activity being particularly important. In considering proposals for agricultural development (walls, fences, yards, stables, sheds, slurry pits etc.) the Planning Authority will have regard to the Department of Agriculture, Food and the Marine document Guidelines and Recommendations on the Control of Pollution from Farmyard Wastes together with the following:

- Siting and design that is keeping with the surrounding area;

- The use of muted coloured materials;
- Grouping of buildings will be encouraged;
- Adequate effluent storage facilities; and
- The Planning Authority will require adequate provision for the collection, storage and disposal of effluent produced from agricultural developments.

It is an objective of Clare County Council:

CDP19.3

To require development proposals to comply with the zoning of the subject site in settlement plans and local area plans.

CDP14.7

- a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;
- b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact; and
- c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

CDP16.8

- a) To safeguard sites, features and objects of archaeological interest generally;
- b) To secure the preservation (i.e. preservation in situ or in exceptional cases preservation by record) of all archaeological monuments included in the Record of Monuments and Places as established under Section 12 of the National Monuments (Amendment) Act, 1994, and of sites, features and objects of archaeological and historical interest generally;
- c) In securing such preservation, to have regard to the advice and recommendations of the Department of the Culture, Heritage and the Gaeltacht;
- d) To have regard to the government publication Framework and Principles for the Protection of the Archaeological Heritage 1999 in relation to protecting sites, features and objects of archaeological interest.

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

5.3. Regional Policy

- Regional Spatial and Economic Strategy for the Southern Region

5.4. Natural Heritage Designations

The subject site is not located within any designated site. The Inagh River Estuary Special Area of Conservation (SAC) (Site Code 000036) is located approximately 750 metres north of the subject site. This site is also designated as a proposed Natural Heritage Area (pNHA).

5.5. 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

A third-party appeal was lodged to the Board on 13th October 2023 by Finula Garrahy. The grounds of appeal can be summarised as follows:

- The appellant resides in the detached house to the north of the site. She has lived in this property for the past 40 years.
- The appellant was not given a chance to respond to the applicant's submission of unsolicited further information and she feels her third party rights have been compromised.
- The proposal does not accord with the 'open space' land use zoning objective as exceptional circumstances do not exist here. The land use zoning matrix does not allow for the development of agricultural enterprise on these zoned lands. The development therefore contravenes materially the zoning objective for the site. The applicant has other lands east of the coast road that potentially could have accommodated the development, and a large portion of the lands are zoned as 'agriculture'.
- The applicant has showed a complete disregard to the planning process due to continuing to build the shed after he was issued a warning letter by the planning authority.
- It is not appropriate to have the silage pit located to the appellant's property due to the negative visual implications and potential public health implications in terms of leachate and odours from the pit.
- No details were submitted regarding the height of the silage pit, no cross details showing the adjoining property, no details regarding run-off from the pit and whether it is constructed with respect to department of agriculture requirements. It is not sufficient to condition this as it is already built. There are alternative locations for the silage pit away from the appellant's property.
- The farm machinery shed is located in an elevated position and is highly visible from the coast road which is designated as a scenic route. There are other lands where the shed would not be visible and are zoned 'agriculture'. No details regarding the use of the machinery or justification for its size have been submitted.
- The shed is not heavily screened by farm buildings. The development is located on the seaward side of the coast which is generally devoid of any development. The development breaks the skyline from several locations whilst travelling

northwards towards Lahinch. The shed also breaks the skyline from Lahinch beach and regard should be had to the general protection of this coastal location.

- The visual impact of the silage pit is located directly adjacent to the scenic route and the appellant's property in which the PA did not consider in their assessment.
- The justification given by the planning authority to retain the silage pit is that it has been present for the last 25 years which is visible on aerial photography. The earliest photography is 2010. Google earth images from 2017 show bales stored in the yard and not a silage pit. 2020 images show a silage pit developed on the site visible as a plastic tarp with tyres holding the tarp down.
- This is fundamentally different to that of wrapped silage bales as there is potential for silage under the plastic to leach which is generally collected by way of drainage channels in the concrete base. Wrapped silage bales generally have a higher dry content and are not prone to leaching.
- There is no report on file showing that the concrete base is constructed in accordance with S128 specifications.
- It is questioned why the planning authority did not have regard to the exempted development provision for agricultural development which have been prepared on the basis the exempted development would not have impacts on the residential amenities of adjacent properties.
- The precautionary principle should be applied, and permission should be refused for the silage pit.
- It appears that the planning authority have ignored the recommendation of the department who are more qualified to assess this development from an archaeological perspective. The proposed development contravenes CDP16.8 and CDP15.8.

6.2. Applicant Response

The applicant did not issue a response to the grounds of appeal.

6.3. Planning Authority Response

They noted the appellant's grounds of appeal and refer to the considerations set out in the planner's report. They respectfully request the Board to uphold their decision and do not wish to make a contingency submission.

6.4. Observations

None

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:

- Principle of the Development
- Residential Amenity & Public Health
- Visual Amenity
- Archaeology
- Appropriate Assessment (AA) Screening

Principle of the development

7.2. I note the Appellant's concerns with regards to the location of the development, the alternative locations available to the applicant and the land use zoning objective for the lands. I note that the Planning Authority (PA) considered the development as a 'non-conforming use' under the Clare County Development Plan 2023-2023 (CDP) and decided to grant permission for the development.

7.3. Having reviewed the land use zoning objective and matrix within the CDP, I note that agricultural developments are not normally permitted on lands zoned 'open space', except in exceptional circumstances. However, section 19.5.5 of the CDP allows for the PA to consider reasonable extensions and improvements to an established use that does not conform to the zoning objectives of the Plan, provided that it is not injurious to the amenities of the area and is consistent with the proper planning and sustainable development of the area.

7.4. I note that the subject site currently accommodates an established agricultural farmyard that has been in operation for a substantial period. I note from GIS Mapping from 1995 (*source: National Monuments Service Historic environment viewer*) that this farmyard was in existence. Having regard to this and to the nature of the retention application, which in my view is a reasonable extension to the existing established farmyard and partially within the envelope of the farmyard, I am satisfied with the

location of the development and that the development represents a non-conforming use in accordance with section 19.5.5, subject to my assessment on the amenities of the area below. Therefore, I am satisfied that the development would not materially contravene CDP19.3 of the CDP. I am satisfied that the development is acceptable in principle.

Residential Amenity & Public Health

- 7.5. I note the concerns of the Appellant with regards to the silage pit in terms of odour and leachates, the absence of any design details, distances to boundaries or construction specifications.
- 7.6. I acknowledge that odour associated with the storage of silage may be a nuisance, however, I do not consider it unacceptable due to the established nature of the farm and to the location within the farmyard envelope. Notwithstanding this, the submitted drawings are inadequate as no dimensions of the pit area or no distances to boundaries or adjoining properties are provided.
- 7.7. Additionally, with regards to soiled yard run-off, I note that the application form states that the existing system is unchanged. I note that the applicant stated that the silage pit has been in place for 25 years and used yearly for the storage of covered silage. However, I note that under application ref. 16/179 this area of the farmyard was outlined as a dry yard (12.2 metres x 10 metres) and round silage bale storage dry yard (23 metres x 14 metres). Therefore, the retention of this yard for use as a silage pit has different environmental issues to the yard area described under ref. 16/179.
- 7.8. I note the PA's report and the report from the environmental assessment officer, who assessed the impact of the development on the European Sites. However, I note that there is no report from the environment section on file. It is stated within the PA's report that discussions were had with the environment section who confirmed only that there were no silage pit separation distances to site boundaries.
- 7.9. Having reviewed the submitted documentation by the Applicant, I consider the information on file to be inadequate. There is no information submitted by the Applicant confirming whether the silage pit is constructed in accordance with the Department of Agriculture, Food and the Marine's S128 specifications (November 2015). Having inspected the site, I observed the yard in a structurally poor condition with a number

of cracks. The PA stated that the area was covered in plastic on the date of their inspection.

- 7.10. I note that the application documentation states that the applicant sources water from a public water supply, however, no details are provided in relation to whether there are any domestic wells in close proximity to the silage pit. Furthermore, there is no information on file detailing whether there are any channels within the silage pit leading to a soiled water tank constructed in accordance with S128 specifications. The unsolicited further information submitted by the Applicant shows the location of a tank as part of application ref. 16/179, however, the channelling to and the capacity of such tank has not been confirmed.
- 7.11. Having regard to the above, I am not satisfied that the Applicant has sufficiently demonstrated that the development would not be prejudicial to public health or would not seriously injure the residential amenities of properties in the vicinity.
- 7.12. With regards to the machinery storage shed, I noted the shed was being used for the storage of farm machinery on the date of my site inspection. Therefore, having regard to the nature and location of the development, I am satisfied that this element of the development would not result in an adverse impact on public health or residential amenity.

Visual Amenity

- 7.13. I note the Appellant's concerns regarding the visual impact of the development. I note that the subject site directly adjoins the designated N-67 scenic route (Scenic Route number 1, Coast Road) under the CDP.
- 7.14. I note that the machinery shed measures 5.6 metres in height with a floor area of 228sqm and has been sited 9.7 metres from the west of the slatted houses. I noted on the date of my site inspection that the structure was visible when travelling along the scenic route and from Lahinch.
- 7.15. Having regard to the nature, scale and location of the development, next to an established agricultural farmyard, I am satisfied that the development is a natural extension to the existing farmyard, does not represent inappropriate development and the development supports an existing farm. Having regard to this, I consider that the location, siting, design and finishing of the machinery shed is in accordance with

objective CDP14.7 of the CDP. Furthermore, having regard to the above and to the 70-80 metre separation distance, I do not consider that the development will result in an unacceptable impact upon the visual setting of the recorded monuments.

- 7.16. With regards to the proposed silage pit, whilst the floor area of the pit is outlined as 112sqm on the submitted application form and a rough location is shown on the submitted site layout plan, no dimensions are provided with regards to the proposed height, width or length and no distances to boundaries or the adjoining properties are provided. I note that the Appellant has provided aerial images and photographs showing the silage pit installed right up to the boundaries of the site. Furthermore, I noted on the date of my inspection that the yard area was above the level of the road and the boundary was defined by a high stone wall and grass verge. Having regard to the information submitted, to the proximity of the adjoining dwelling and scenic route, I am not satisfied that the development would not result in a negative impact on the visual amenities of the adjoining dwelling or from the scenic route. Therefore, I consider the development to contravene objective CDP14.7 of the CDP.

Archaeology

- 7.17. I note that the Department of Housing, Local Government and Heritage requested an archaeological post impact assessment as part of further information, however, the PA considered that there was no likely detrimental impact on recorded monuments due to the distance between the monuments and shed. I note the comments from the Appellant in this regard.
- 7.18. Having reviewed the National Monuments Service's historic environment viewer, I note that the location of the machinery shed is located approximately 15-30 metres east/southeast of the zone of notification for ref. CL023-065 and CL023-001 (Cliff edge forts) and approximately 70-80 metres from these recorded monuments. Having regard to the nature and scale of the development, to the separation distance and to the location of these monuments in separate fields, I am satisfied that the development to be retained would likely not have resulted in an adverse impact on archaeological assets. Therefore, it is my view that a archaeological post impact assessment is not required and the development does not contravene objective 16.8 of the CDP.

Appropriate Assessment (AA) Screening

- 7.19. I have considered the project in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located approximately 750 metres south of the Inagh River Estuary Special Area of Conservation (SAC) (Site Code 000036).
- 7.20. Having considered the nature, scale and location of the project, 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 visited the site and having reviewed the Environmental Protection Agency's AA Mapping Tool, I note that there are no direct hydrological connections between the subject site and the designated site. The nearest watercourse is located approximately 110 metres north of the site.
 - Having regard to the distance from the European Site regarding any other potential ecological pathways and intervening lands and to the level of dilution available in Liscannor Bay.
 - Having regard to the screening determination by the environmental assessment officer and planner of the PA.
- 7.21. I conclude that on the basis of objective information, that the development to be retained would not have likely had 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.

8.0 Recommendation

Having regard to the foregoing, I recommend that a split decision be issued as follows:

- (1) Grant permission for the retention of the machinery shed; and
- (2) Refuse permission for the retention of the silage pit and all other site and ancillary works.

9.0 Reasons and Considerations (1)

Having regard to the 'open space' zoning objective applying to the site, as set out in the Clare County Development Plan 2023-2029, and to the location of the machinery shed next to an existing established agricultural farmyard, it is considered that the development to be retained is a reasonable extension, is a non-conforming use in accordance with Section 19.5.5 of the Development Plan and, therefore, would not materially contravene the zoning objective of the Plan. Having regard to this, to the nature and scale of the development to be retained and to the pattern of development on the site and in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the visual or scenic amenity of the area, would not adversely impact the residential amenity of the area and would not result in an adverse impact on archaeology within the area. It is therefore considered that the development to be retained would be in accordance with section A1.8 and objectives 14.7 and 16.8 of the Clare County Development Plan 2023-2029 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.

Reason: In the interest of clarity.

2. The machinery shed shall be used solely for the storage of agricultural machinery used in connection with the farm-holding and shall not be used for the housing of animals or for commercial purposes.

Reason: In the interest of clarity.

3. Drainage arrangements for the disposal of surface water shall comply with the requirements of the planning authority for such works. No surface water shall discharge to the public road or to adjoining properties.

Reason: In the interest of public health.

11.0 Reasons and Considerations (2)

1. Having regard to the location of the silage pit to be retained in close proximity to an adjoining dwelling and to the absence of information with the application and appeal on the siting, the construction specifications and management of surface water run-off, the Board is not satisfied that the development would not be prejudicial to public health or would not seriously injure the residential amenities of properties in the vicinity. The development would not, therefore, be in accordance with the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application and appeal in relation to the siting and scale of the silage pit and having regard to the proximity of the development to the N-67 scenic route and to the adjoining dwelling, the Board is not satisfied that the development would not result in an adverse impact on the visual amenities of the adjoining dwelling or from the scenic route. Therefore, it is considered that the development would contravene objective CDP14.7 of the Clare County Development Plan 2023-2029 in this regard. Accordingly, 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

28th May 2024

Appendix 1 - EIA Pre-Screening

An Bord Pleanála Case Reference	318239-23			
Proposed Development Summary	Retention of machinery shed, silage pit and all other site and ancillary works			
Development Address	Crag, Lahinch, County Clare			
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)	Conclusion
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: 28th May 2024

Gary Farrelly