



An
Bord
Pleanála

Inspector's Report

ABP-318916-24

Development	Retention of existing ground level. Permission to reduce ground levels and to erect proposed machinery storage area
Location	Tullig, Cross, County Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	23/60360
Applicant(s)	M.B Downes & V Troy
Type of Application	Retention Permission / Planning Permission
Planning Authority Decision	Notification to Grant
Type of Appeal	Third Party
Appellant(s)	Patrick Naughton
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 1.46 hectares and is located on the Loop Head peninsula within the townland of Tullig, Cross, County Clare, which is approximately 14km southwest of Kilkee. The existing site accommodates a two storey dwellinghouse and access is taken off the single carriageway local road, L-6008. The site is approximately 1.7km directly north of the R-487 which is a designated scenic route under the Clare County Development Plan 2023-2029 (Ref. Number 17).
- 1.2. The site is bounded to the east and west by agricultural buildings, to the south and southwest by agricultural lands and to the north by the public road. The topography of the site slopes substantially downwards from the level of the public road. The finished floor level of the existing dwelling is 4.5 metres below the level of the public road and the ground level to the rear and sides of the dwelling is generally flat. The site has been extensively surfaced and levelled with material.

2.0 Development

- 2.1. Permission is sought to retain the existing ground levels onsite and permission is sought to reduce ground levels and erect a '*machinery storage area*'. No information is provided which outlines the area to be retained or the volume or source of the fill material that has been imported to the site. A shed is proposed which will have a finished floor level of +3.90 as outlined on the submitted site layout plan.
- 2.2. The shed will have an internal floor area of 135sqm (reduced from 182sqm at further information). The exterior of the shed will measure 15 metres in length and 10 metres in width and will be built to a ridge height of 5.7 metres (reduced from 6 metres at further information). External finishes will comprise of dark grey cladding.
- 2.3. Surface water is proposed to be treated, via a soak pit, to an existing land drain to the south of the site.

3.0 Planning Authority Decision

3.1. Decision

In considering the application, Clare County Council (the Planning Authority (PA)) sought further information on a range of issues, including the following:

- The reduction in the area that is surfaced in crushed stone to a minimum to accommodate turning movements of agricultural machinery and replacement with an area of soft landscaping.
- Details of any external storage and any external lighting.
- The reduction in the overall height, bulk, floor area and scale of the storage shed.
- Details regarding the management of surface water.
- Details on the amount of traffic movements having regard to the narrow and limited capacity of the local road network.

The PA decided to grant permission by Order dated 18th December 2023, subject to 5 no. mainly standard conditions. Condition 2 required the shed only to be used for the storage of agricultural machinery. Condition 3 required the disposal of surface water within the site. No financial contribution was attached.

3.2. Planning Authority Reports

Planning Reports

There are a total of 2 no. area planner reports which assessed the development in terms of visual amenity, residential amenity, traffic, surface water and flood risk, archaeology, EIA preliminary examination and appropriate assessment screening. The recommendations to request further information and to grant permission were endorsed by the Senior Executive Planner.

Other Technical Reports

West Clare Municipal District (Report dated 23/10/23) – They had no submission or observation to make.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

There was one third party submission received which raised concerns with the development in terms of the impact on the landscape, the commercial nature of the development, the extra traffic movements associated with the development, concerns with noise and lighting from machinery and concerns regarding the impact on privacy. A representation from a local councillor was also made on the application.

4.0 Planning History

PA Ref. 21/480 (subject site)

M B Downes was granted permission to construct a dwellinghouse and wastewater treatment system.

PA Ref. 23/60179 (subject site)

M B Downes was refused permission to erect a machinery storage area. The reasons for refusal were in relation to unauthorised excavation and infilling works and to the visual impact of the development on the designated 'settled landscape'.

5.0 Policy Context

5.1. Clare County Development Plan 2023-2029

The site is located within a designated 'settled landscape' area

CDP14.2 Settled Landscapes

It is an objective of Clare County Council:

To permit development in areas designated as 'settled landscapes' to sustain and enhance quality of life and residential amenity and promote economic activity subject to:

I. Conformity with all other relevant provisions of the Plan and the availability and protection of resources;

II. Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;

III. Regard being had to the need to avoid intrusion on scenic routes and on ridges or shorelines.

Developments in these areas will be required to demonstrate:-

- a) That the site has been selected to avoid visual prominence
- b) That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads.
- c) That design of buildings and structures reduces visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.

CDP14.7 Scenic Routes

It is an objective of Clare County Council:

- 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.

Appendix 1 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;

5.2. Natural Heritage Designations

The subject site is not located within any designated site. The Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165) is located approximately 4km east of the subject site and the Kilkee Reefs SAC (Site Code 002264) is located approximately 4km northeast of the site. The Illaunonearaun Special Protection Area (SPA) (Site Code 004114) is located approximately 4.5km northeast of the site, the River Shannon and River Fergus Estuaries SPA (Site Code 004077) is located approximately 9km east of the subject site and the Loop Head SPA (Site Code 004119) is located approximately 9km west of the site.

5.3. Environmental Impact Assessment (EIA) Screening

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 screening determination. Refer to Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

A third-party appeal was lodged to the Board on 23rd January 2024 by Patrick Naughton and is summarised as follows:

- As part of application ref. 21/480, the applicant's father was stated as the landowner and the site was to be transferred to the applicant, MB Downes. It was stated that the father was the owner of 40 acres of land at Tullig, Cross.
- The percolation area, as conditioned under ref. 21/480, was not constructed as conditioned and represents unauthorised development.

- As part of 21/480, the applicant's partner's occupation was not declared as his intentions would have required to be disclosed.
- Due to 21/480, the site is now zoned residential or uses ancillary to the residential amenity of the dwelling.
- The application should have been invalid as the 'machinery storage area' description of the application is misleading and incorrect. This description is maintained throughout the application and public notices.
- The application is for a commercial development, as declared by the applicant under question 16 of the application form.
- The application is located on lands zoned residential and therefore is a material contravention of the Clare County Development Plan 2023-2029.
- The applicants do not have any agricultural land contiguous to the site and therefore it cannot be considered an agricultural shed. There is precedent for only allowing agricultural machinery sheds on lands which actually form part of a farm in the ownership of the applicant. Reference is made to the further information sought by the PA under application ref. 17/248.
- The PA's first report assumed that the proposal was for an agricultural machinery shed, however, the application declared it as a machinery storage area. The further information response first mentions farm machinery.
- The further information response introduces for the first time a surface water drain to service the proposed soak pit and this requires retention permission.
- The use of the road by the applicant as the same category of a farmer is misleading.
- The PA considered the revised shed size to be reasonable given the Applicant's agricultural contractor business, however, no where in the application is this business disclosed.
- There is no assessment of the hydraulic capacity of the ground to accept all the stormwater from the site and wastewater effluent arising.
- Within the AA screening, there is no assessment of the potential impacts of the existing surface water drain on the Lower River Shannon SAC. The PA did not

have this information in order to come to a proper determination without lacunae.

- The qualifying interests of the SAC could be impacted from discharges of oils and wash waters and this has not been addressed or the need for mitigation.
- Photographs are provided showing what is described as at least six 13-20 tonne tracked excavators and an articulated low-loader truck.
- It is respectfully requested that the Board overturn the decision of the council and refuse the application.

6.2. Applicant Response

The Applicant responded to the grounds of appeal on 19th February 2024. Their response is summarised as follows:

- The application was never intended to be for commercial use but was intended to store agricultural farm machinery next to the home for security purposes.
- The applicant MB Downes will be a future farmer at Tullig, Cross to replace her father, but first will be in a joint partnership with him.
- A letter from the applicant's solicitor addressed to the applicant's agent states that the applicant's father has informed her that the applicant (MB Downes) will be the farmer but at the moment is happy to co farm.
- The proposed 'agri storage area' was reduced in height and floor area as requested at further information.
- The surface water soak pit was to the PA's satisfaction and the overflow pipe was proposed to the existing water course.
- The existing local road network has serviced the farming community of Tullig for the past 100 years. The farm machinery to be stored was already in use in the family farm and using the local road.
- The applicant, V Troy, is a commercial contractor but has no dealings in the Downes' family farm. V Troy's farm machinery has always been parked at his uncle's farm at Kilballyowen, Cross. A letter from the uncle is provided.

- Due to farm building extensions and renovations at the applicant's uncles' farm, machinery moved to the subject site for one week and was returned immediately after works were completed.

6.3. Planning Authority Response

The PA responded to the grounds of appeal on 2nd February 2024. Their response is summarised as follows:

- The percolation area is located in the immediate environs of the permitted location and the site characterisation report information as originally received is applicable.
- The site is not zoned for residential purposes and is located in a rural area outside of any settlement. The proposal does not constitute a material contravention of the development plan.
- The validity of the current application is in accordance with the Act and Regulations. Application ref. 23/60273 was declared invalid due to no site notice being in place on the date of the site inspection.
- The red line boundary is not consistent with application ref. 21/480.
- The 5-metre minimum separation distance between the percolation area and soakpit is achieved.
- The AA screening conclusion was based on the original application and further information response, and it is incorrect to state that all elements of the further information response were not considered.
- The applicant outlines the requirement for the shed for the storage of agricultural machinery in the further information response. The floor area was considered reasonable to facilitate the applicant's agricultural contractor business.
- Any unauthorised uses on the site should be managed through the planning enforcement process.
- It is respectfully requested that the Board upholds the decision to grant permission.

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:

- Background
- Nature of the Development
- Traffic Safety
- Material Contravention
- Site Works (**New Issue**)
- Siting (**New Issue**)
- Residential Amenity (**New Issue**)

Background

7.2. Having reviewed the submitted documentation, it is my view that there is clear ambiguity with this application. The Board should note that the description of the development relates to a “*machinery storage area*”. It is unclear why the title of the application did not specify a shed. I am in agreement with the Appellant and consider the title of the application to be misleading. I note, however, that the third party was not restricted or otherwise constrained from participation in the process.

7.3. Due to the description of the development, I am unclear as to whether the application refers to the use of the entire 1.46-hectare area of the site as a machinery storage area or only the shed as proposed. Additionally, I note that condition 2 of the PA’s notification to grant only specifies for the shed to be used for the storage of agricultural machinery and there is no condition that prohibits any external storage of agricultural or other machinery.

7.4. The Board should also note that revised public notices were submitted as part of a significant further information response, however, the original description of the development as a “*machinery storage area*” was not modified.

Nature of the Development

- 7.5. The Appellant has raised concerns regarding the use of the proposed shed. Having reviewed the submitted documentation, I consider that there is clear ambiguity regarding the intended use of the shed structure / overall site. The Applicant states in the further information response that the use of the shed is to “*store farm machinery to include 2 no. tractors, baler, bale handler, manure spreader, transport box, mower, sprayer, to be stored for security purposes*”.
- 7.6. Notwithstanding the above, the Board should note that the submitted application form declares the development as commercial with the nature of the activity to be carried out on site described as ‘*contractor in the agri business*’ and the nature of traffic to the development to be ‘*agri related machinery tractor and various agricultural machinery*’. The Applicant considered it commercial development under question 16 of the submitted application form. Furthermore, the application fee was calculated on the basis of it being a commercial development (from PA ref. 23/60273). Having regard to the foregoing, I do not consider the development to be a farm based agricultural development.
- 7.7. Within the Applicant’s response to the grounds of appeal it is stated that the Applicant will be a future farmer to replace her father but before that will join him in a joint partnership. I note that the subject farm is located adjacent to the subject site as illustrated within the blueline ownership boundary in application ref. 21/480. I note that this landholding comprises of an existing farmyard with a number of agricultural sheds and structures and has a separate access off the public road.
- 7.8. Whilst I consider the development to be commercial in nature, if the Board was to consider the structure to be that of a farm based agricultural type shed, there is no justification provided on why it is sited within the curtilage of the dwelling and not within the existing farmyard to the east of the site which I consider would be sufficient distance from the dwelling in terms of security. Additionally, the Board should note that Appendix A1.8 of the Clare County Development Plan 2023-2029 (CDP) seeks the siting of agricultural developments in keeping with the surrounding area and encourages the grouping of buildings. If the Board was to consider the structure to be that of a farm based agricultural type shed it is my view that this standalone building within the curtilage of a dwelling would not be in keeping with the surrounding area

and would represent an independent structure at a removal from an existing farmyard contrary to Appendix A1.8.

Traffic Safety

- 7.9. I note that the Appellant considers the term agricultural use misleading in terms of the impact on the road network. I note the Applicant's response to the grounds of appeal stating that the farm machinery is already in use on the farm and using the local road.
- 7.10. Having inspected the site, I observed that the local road network at this location is substandard in terms of width and carrying capacity. The nearest road that accommodates two-way movements is the regional road R-487 which is located approximately 2.3km (via the local road network) to the southeast of the subject site.
- 7.11. It is my view that there would be a substantial difference with regards to the impact on such a substandard local road network between that of a commercial type development and that of a farm based agricultural type development.
- 7.12. On the basis of the information submitted with the application and appeal, to the lack of clarity in relation to the activities that would be carried out onsite, to the number, type or timing of traffic movements, I am not satisfied that the development would not result in a traffic hazard and/or obstruction of road users.

Material Contravention

- 7.13. I note the comments from the Appellant where it is stated that the development is a material contravention of the CDP due to the land zoning. The Board should note that the site is located within a rural area on unzoned lands. Therefore, I consider that the development would not result in a material contravention of the landuse zoning provisions of the CDP in this regard.

Site Works (New Issue)

- 7.14. The Board should also note that this application relates to the retention and reduction of site levels onsite, and I noted on the date of my site inspection that the surface of the site was substantially covered in gravel. I also observed that there was mounding from what appeared to be removed soil to the south of the site. I noted that the ground level to the rear of the dwelling was flat although the submitted site layout plans indicate a gradual downward slope of approximately 1.5 metres (+5.10 to +3.55). This

gradual downward slope is similar to what was proposed within the site of application ref. 21/480.

- 7.15. Whilst I note that there are no grounds of appeal in relation to this element of the development, there is very little information provided regarding the actual area of the site to be retained. Furthermore, there is no information submitted that details the volume, type or source of material that was imported to surface the site. Additionally, the submitted drawings are not clear on the area or volume of levels that are proposed to be reduced. My concerns with this element of the development are reflected in my appropriate assessment screening below.
- 7.16. The Board should note that this is a new issue and may wish to seek the views of the parties, however, having regard to the other substantive reasons for refusal set out below, it may not be considered necessary to pursue the matter.

Siting (New Issue)

- 7.17. The site is located within the designated 'settled landscape' under the CDP and approximately 1.7km directly north of a designated scenic route (ref. Number 17) where there are clear views of the subject site. I note that the PA originally had concerns regarding the impact of the development on the visual amenities of the area and the character of the settled landscape due to the size of the building, extent of groundworks and limited screening of the site. The further information reduced the scale of the shed and provided for a reduced area of hard surfacing. However, I note that the submitted site layout plan does not specify the type of landscaping or screening proposals.
- 7.18. Having inspected the site, I noted that the site was exposed and elevated with clear views of the site from the scenic route to the south. The Board should note that I have significant concerns with the location of the development and its potential adverse impact on the scenic route due to the ambiguity with the application in terms of the nature of the development, whether there is any external storage proposed and to the absence of any measures to screen the development along the southern boundary of the site. I note that there is an existing agricultural cluster of sheds to the east of the site which, in my view, would represent a more appropriate area to site the development.

7.19. However, this is also a new issue and the Board may wish to seek the views of the parties, however, having regard to the other substantive reasons for refusal set out below, it may not be considered necessary to pursue the matter.

Residential Amenity (New Issue)

7.20. I note that the Appellant's dwelling is located to the north of the site on the opposite side of the public road. The PA originally had concerns regarding the impact on residential amenities in terms of external lighting. In response, the Applicant confirmed that lighting would be located above the external door on the south elevation of the structure, away from view from this dwelling.

7.21. Whilst I note that the Appellant's grounds of appeal do not directly reference concerns in relation to the impact on residential amenity, the Board should note that due to the ambiguity of the application I have concerns regarding the impact of the development on residential amenity. A commercial type development in such a rural area should normally specify the level of activities that will take place onsite including externally, the hours of operation and whether there are any nuisances, such as noise, associated with the use. I note that no such information is provided and, therefore, on this basis, I am not satisfied that the development would not seriously injure the residential amenities of the area.

7.22. However, this is a further new issue and the Board may wish to seek the views of the parties, however, having regard to the other substantive reasons for refusal set out below, it may not be considered necessary to pursue the matter.

Other Issues

7.23. I note the photographs provided by the Appellant in relation to the use of the site and the comments that the existing surface water drain requires retention permission. I note the responses from the Appellant and PA in this regard. The Board should note that the matter of enforcement falls under the jurisdiction of the PA.

7.24. Furthermore, the Appellant raises concern with the capacity of the site to accommodate wastewater and with regards to the location of the wastewater treatment system approved under application ref. 21/480. I note that wastewater provision does not form part of the application. There is an existing treatment system onsite that serves the dwelling (approved under application ref. 21/480) and I am

satisfied that the siting is in accordance with the site layout plan submitted at further information under ref. 21/480 and the separation distances are in accordance with the Environmental Protection Agency's 2021 Code of Practice for domestic wastewater treatment systems.

8.0 Appropriate Assessment (AA) Screening

- 8.1. I have considered the project in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. It is proposed to treat surface water, via a soak pit, to an existing land drain to the south of the site. I note the concerns of the Appellant in relation to pollution from the development. The subject site is located approximately 3.8km northwest of the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165).
- 8.2. I note that the PA were satisfied that there would be no likely significant effect given the distance to the Lower River Shannon SAC (Site Code 002165), the nature of works and to there being no direct hydrological link. I note that this AA screening is dated after the submission of the further information details, which first highlighted the discharge of surface water to the drain to the south.
- 8.3. Having reviewed the Environmental Protection Agency's AA Mapping Tool and having visited the site and having regard to the topography of the adjoining lands which slope downwards to a stream to the south, I can reasonably conclude that this subject drain connects to the said stream. This stream connects to the Moyarta River approximately 1.5km to the east which connects to the Lower River Shannon SAC approximately 2.5km further downstream. Therefore, notwithstanding the distance to the SAC, I consider that there is potential for an indirect impact on the European Site in terms of water quality.
- 8.4. Having considered the nature, scale and location of the development, and based on the information submitted with the application and appeal, I consider that there is insufficient information provided in order for the Board to be satisfied that there would be no conceivable risk to the Lower River Shannon SAC. The reason for this conclusion is as follows:

- The site has an indirect hydrological link with the Lower River Shannon SAC being located approximately 4km downstream of where the existing land drain likely meets an existing stream to the south of the site.
- To the absence of any information in relation to the levels to be retained onsite in terms of the source and makeup of the leveled material.
- To the ambiguity within the application in relation to the nature of the development (as assessed under Section 7 of my report) and whether any machinery and ancillary services/plant are proposed to be stored externally.
- To the absence of any details in relation to surface water pollution control measures onsite.

8.5. Notwithstanding the above, having regard to the 3.8km distance via air to the 002165 SAC, I am satisfied that there would likely be no significant effect, in terms of noise or general disturbance, on the qualifying interests of the SAC.

8.6. Additionally, the Board should note that the subject site is also located approximately 4km from the Kilkee Reefs SAC (Site Code 002264), approximately 4.5km from the Illaunonearaun Special Protection Area (SPA) (Site Code 004114) and approximately 9km from the River Shannon and River Fergus Estuaries SPA (Site Code 004077) and the Loop Head SPA (Site Code 004119). Having regard to the absence of any hydrological link to European Sites 002264, 004114 and 004119, to the location of SPA 004077 upstream of Carrigaholt Bay and to the level of dilution available within said Bay, and to the distance regarding any other potential ecological pathways. I am satisfied that the development would not likely have a significant effect on these European Sites, in view of the sites' conservation objectives.

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 information submitted and to the substandard nature of the local road network in terms of width and carrying capacity, it has not been satisfactorily demonstrated by the applicant that traffic movements arising from

the proposed development would not endanger public safety by reason of a traffic hazard and obstruction of road users. Accordingly, the development would be contrary to the proper planning and sustainable development of the area.

2. It is considered that insufficient information has been provided as part of the application and appeal, with regards to the extent of works to be retained and the extent of change in levels, the materials imported to the site, the nature of activity to be carried out onsite and whether there is any external storage of machinery proposed or associated pollution control measures. In this regard the Board is not satisfied that the development would not affect the water quality of the Lower River Shannon Special Area of Conservation (Site Code 002165) having regard to the indirect hydrological connection to the said European site. Therefore, the Board is not satisfied that the development to be retained and the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the said European site, in view of the site's conservation objectives.

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

31st July 2024

Appendix 1 - EIA Pre-Screening

An Bord Pleanála Case Reference	318916-24		
Proposed Development Summary	Retention of existing ground level. Permission to reduce ground levels and to erect proposed machinery storage area		
Development Address	Tullig, Cross, 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)
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: 31st July 2024

Gary Farrelly