

# An Bord Pleanála



## Inspector's Report

PL18.246181

**DEVELOPMENT:-**

Retention of shed, front entrance wall, piers and gates and all associated development works at Sra Townland, Ballybay, County Monaghan.

**PLANNING APPLICATION**

**Planning Authority:** Monaghan County Council  
**Planning Authority Reg. No:** 15/160  
**Applicants:** Kasper and Margaret Zusters  
**Application Type:** Retention of Planning Permission  
**Planning Authority Decision:** Refuse

**APPEAL**

**Appellants:** Kasper and Margaret Zusters  
**Types of Appeal:** 1<sup>st</sup> Party -v- Refusal  
**Observers:** (i) Lee Conlon  
(ii) Eugene Conlon  
(iii) Jamie Conlon

**DATE OF SITE INSPECTION:** 18<sup>th</sup> May, 2016.

**INSPECTOR:** Paul Caprani

## **1.0 INTRODUCTION**

PL18.246181 relates to a first party appeal against the decision of Monaghan County Council to refuse the retention of planning permission for a shed, front entrance wall, piers and gates and all associated development works serving a rural dwelling in the townland of Sra, Ballybay, County Monaghan. Planning permission was refused by Monaghan County Council for a single reason that the proposed development failed to demonstrate satisfactory sight visibility splays at the entrance to the dwellinghouse and as such the proposed development was deemed to be contrary to Section 15.23 of the Monaghan County Development Plan and thus, if permitted would endanger public safety by reason of a traffic hazard.

## **2.0 SITE LOCATION AND DESCRIPTION.**

The appeal site is located in the townland of Sra on the southern side of a local road which joins with the R180 approximately 3 kilometres south-east of Ballybay in Monaghan. The site is located less than 100 metres to the west of the local road serving the site in the R180.

Directly opposite the entrance to the site is a vehicular entrance and a laneway on the southern side of the road. The access which is the subject of the current appeal, does not face directly onto the public road but is incorporated at an angle that faces south-westwards onto the public road. The access serves a dwellinghouse which is centrally located within the site and a single-storey two sheds which are located to the front of the dwelling. The larger shed is located in the south western corner of the site. This shed rises to a ridge height of 4.25 metres and covers a floor area of just under 56 square metres.

When the dwellinghouse was originally constructed the entrance and front boundary comprised of a trellis type wooden fence with wooden gates and gate posts. However this is replaced by a front entrance wall together with pillars along the wall with a small railing running along the wall. The overall height of the wall ranges between 1.3 metres and 1.85 metres in height with the pillars rising to a maximum height of 1.85 metres to 2 metres in height. Small concrete bollards are also placed along the front of the site. The entrance gates are set back approximately 6 metres from the edge of the existing carriageway. There is no development on lands immediately adjacent to the subject site.

### **3.0 PROPOSED DEVELOPMENT**

Planning permission is sought for the following:

The retention of the existing front boundary and entrance to the subject site and the retention of the domestic shed as constructed on site. Further drawings submitted on the 22<sup>nd</sup> of December sought to relocate the entrance to a point further west approximately 5 metres, along the boundary and to replace the concrete wall and railing with a new concrete post and treated fence (0.9m in height) to the east of the new gate post. The boundary wall to the west of the new gate post is to set back at a more acute angle to the roadway.

### **4.0 PLANNING HISTORY**

It appears from the information contained on file that planning permission was granted for a dwelling and associated works on the 5<sup>th</sup> September, 2002 under planning Reg. Ref. 01/899. Planning permission was granted to Carga Rock Development Company Limited. Details of the grant of planning permission are attached to Appendix B of the grounds of appeal. The Board requested details of this application from Monaghan Co. Council. The Board was currently informed that details of the applicant were not available.

Condition 2(a) required a new entrance to form a bellmouth of 4 metres radius with the edge of the new boundary. Entrance gates to open inwards only. 2(b) required an area within the visibility splays shall be clear to provide a level surface no higher than 250 millimetres above the level of the adjoining carriageway and should be retained and kept clear thereafter. 2(d) stated that sight distance of 50 metres in each direction to be provided from a point in the entrance 3 metres from the edge of the road and 1 metre above ground level. Sight distances to be measured to the nearside road edge in both directions Where it is necessary to remove hedges in order to achieve this sight distance, the new boundary should be located clear of sightlines.

Condition 5(a) states that only that portion of the roadside hedgerow which must be lowered or uprooted to provide adequate sight distances to be removed. All other trees and hedgerows bounding this site to be permanently retained in this development, to be reinforced with

additional planting and to be protected from damage at all times particularly during building operations.

According to the grounds of appeal the construction of the dwelling commenced in 2006 and a Certificate of Compliance dated 31<sup>st</sup> May, 2007 was issued to the person who constructed the dwelling, again the Board will note that this was not the first party involved in the current appeal. The building was then sold to the current first party.

Details of one other planning application is attached in a pouch to the rear of the file Reg. Ref.07 1539. Under this application Monaghan County Council granted planning permission for the construction of a single storey detached domestic garage to the front of the dwellinghouse at the north-western corner of the site. On 17<sup>th</sup> September, 2007 planning permission was granted subject to a single condition.

## **5.0 PLANNING AUTHORITY ASSESSMENT**

### **5.1 Initial Assessment**

The planning application was lodged with the Planning Authority on 6<sup>th</sup> May, 2015. A covering letter was submitted with the application. A number of letters of objection were submitted in respect of the proposed development raising issues in respect of unauthorised use of the shed on site for commercial purposes. The commercial use of the shed has given rise to amenity issues in relation to noise etc. Concerns were also expressed that the proposed access and entrance arrangements to the dwellinghouse constitute a traffic hazard due to restricted sightlines.

A report from the Environmental Health Officer stated that there is no objection to the proposal subject to the shed being used for domestic purposes only and that no businesses operated from the site.

A report from the Environmental Section states that there are no environmental concerns with regard to surface or groundwater pollution. Concerns in respect of air and noise emissions are deemed to be specialist areas of environmental monitoring and it is recommended that the file is referred to the environmental health officer for observations.

## 5.2 Additional Information Request

The planner's report notes the detailed observation on file and also notes that on the approved site layout plan in respect of the original application, the site entrance point is approximately 5 metres more westerly than the current survey drawings depict for the entrance point which now exists on site. It is therefore considered that the entrance point is non-compliant. It is also considered that the design/aesthetics of the entrance wall appears not to be in accordance with Policy LSP5 of the Monaghan County Development Plan. Notwithstanding this the planner's report considers that the walls, piers and gates as in situ to be an acceptable design. It is also considered that the existing entrance does not provide 50 metres by 3 metres clear visibility splays in each direction. It is also considered that any resurfacing works along this stretch of the road have rendered the site distance requirement to be altered. It is considered that a section of the roadside wall/pier obstructs requisite sight distances in an easterly direction and therefore additional information is requested. The following additional information is requested.

1. The Planning Authority notes from submitted plans and a related sight inspection that the entrance configuration as existing is not in compliance with details as approved under planning permission 01/899. On this basis, the entrance configuration as existing is therefore unauthorised. Furthermore the Planning Authority also notes that as the existing entrance configuration does not provide requisite sight distances of 50 metres x 3 metres, in both directions along the public road. The applicant is therefore required to submit revised proposals which demonstrate how sightlines can be achieved. The visibility splays shall be measured from a point 3 metres from the road edge at the centre of the proposed entrance and 1 metre above ground level to a point measured to nearside edge of road in each direction. This additional information shall be submitted on a revised site layout at a scale of 1:500. The applicant shall illustrate on revised site layout plans all necessary site work including the extent of the front boundary hedge, embankments, trees and utility poles which will be required to be removed to achieve the site distance. The area within the visibility splays shall be cleared to provide a level surface no higher than 250 millimetres above the level of the adjoining carriageway and shall be retained and kept clear thereafter. Any pole or column materially affecting the visibility shall also be removed.

Where sight distances are not achievable within the site area and where the hedgerows do not belong to the applicant legal agreements with adjoining landowners giving their consent to allow the removal of the hedgerow/hedges to provide the required sight distance shall be submitted to the Planning Authority.

2. In respect of the aspect of the submitted application seeking retention of the entrance wall and piers, the Planning Authority notes a portion of this entrance wall blocks requisite sight distances in an easterly direction from the entrance point. Therefore the applicant is requested to submit revised proposals to demonstrate the demolition/removal of the applicable portion of the entrance wall which restricts sight distances.
3. The Planning Authority notes that a separate shed exists within the site area which is unauthorised. In the interest of orderly development and to regularise this unauthorised development, the Planning Authority requires the submitted application to be amended so as to retain this unauthorised shed/store.
4. The Planning Authority notes that site landscaping works pursuant to the requirements of permission 01/899 have not been implemented. The applicant is requested to submit details demonstrating how it is intended to address this aspect of non-compliance with condition no. 01/899. This further information request was dated 29<sup>th</sup> June, 2015.

### **5.3 Further Information Submission**

On 22<sup>nd</sup> December, 2015 revised drawings were submitted.

In respect of the issues raised in Points 1 and 2 the applicant maintains that the current wall and entrance gates were constructed in exactly the same location as the previous timber post and rail fence and ranch type gates that were in place since the dwelling was originally constructed. Nevertheless the revised proposal submitted involves the removal of the existing entrance gates, piers, walls and railings and the relocation of the entrance further west along the boundary of the site. Ranch type gates are proposed as well as the concrete post and timber rail fence and it is considered that the new entrance gates and fence are located well back behind the required site visibility splays. Also attached are plans, elevations and sections of the small storage shed to the front of the dwelling.

Regarding Point 4 of the additional information the site plan shows the proposed landscaping layout including boundary treatments which, if implemented, should address the issue of non-compliance of Condition No. 5 associated with the original grant of planning permission.

#### **5.4 Further Assessment by the Planning Authority**

A number of detailed observations were again submitted by observers objecting to the alterations incorporated into the proposed development. Again for reasons primarily relating to traffic concerns.

The planner's report notes that the proposed entrance does not provide for clear and unobstructed site splays of 50 metres in both directions as required in Section 15.23 of the Monaghan County Development Plan. Section 15.23 requires applications involving third party land must be accompanied by a written agreement between all parties concerned. As not such agreements have been submitted, the proposed development is considered to constitute a traffic hazard. In respect of the existing stores and sheds it is not considered that this aspect of the work is unacceptable when assessed against the policies of the Monaghan County Development Plan.

In its decision dated 26<sup>th</sup> January, 2015 Monaghan County Council issued notification to refuse planning permission for the proposed development for the following sole reason:

*Section 15.23 of the Monaghan County Development Plan states it is the policy of the Council to "grant planning permission for development involving the provision of visibility splays, only where the applicant is able to demonstrate control or the reasonable prospect of requiring control of any land required for the provision of visibility splays". Planning applications involving third party land must be accompanied by a written legal agreement between all parties.*

*The site of the proposed development accesses onto local road LT71001 where sight distances of 50 metres by 3 metres by 1.05 metres in accordance with Table 15.3 of the Monaghan County Development Plan 2013-2019 are required to facilitate the proposed development.*

*The submitted details have failed to demonstrate to the satisfaction of the Planning Authority that there was requisite sight distances are achievable on lands within the control of the applicant and the requisite*

*legal agreements with the owners of third parties within the requisite site splays have not been submitted. Consequently the proposed entrance point, if permitted will endanger public safety by reason of a traffic hazard and would be contrary to the Development Plan 2013-2019 and contrary to the proper planning and sustainable development of the area.*

## **6.0 GROUNDS OF APPEAL**

The decision of Monaghan County Council to issue notification to refuse planning permission was the subject of a first party appeal on behalf of the applicant. In respect of the issue of access and visibility splays the background of the current application is set out. It is stated that the access as constructed is substantially the same as that permitted under the original application. It is noted that Condition No. 2 of the permission which relates to sight distances and visibility splays did not require any third party agreement under the original consent. It is further noted that the house when built, received a Certificate of Compliance on 31<sup>st</sup> May, 2007 (a copy of which is contained in Appendix C).

The Board are requested to note Point 7 & 8 of the Certificate which states that “*no wayleaves are required in relation to the enjoyment of such services or the access to and from the premises*”. And “*in the event of that the premises have not been built or laid out exactly in accordance with the planning permission referred to at paragraph 3 above, any disparity is unlikely to affect the planning and development of the area as envisaged by the Planning Authority and expressed through the said planning permission*”. The current appellants have not altered the position of this original access in any material way.

While it is acknowledged that the replacement walls and gate are not the materials as per the original permission and the applicants did not challenge this point they acceded to the Planning Authority’s request on the understanding that the revised access with the reinstatement of the post and rail fence would be deemed acceptable and would not require control/re legal agreements with regard to vision splays. It is also noted that the roadside verge is in public ownership.

On this basis it is submitted that the Planning Authority have erred in applying Section 15.23 of the Monaghan County Development Plan as this relates to proposals involving new accesses or intensification of existing access neither of which apply in this instance.



Details of (a) the original approved site layout under Reg. Ref. 01/899, (b) the access configuration as it presently exists and (c) the site layout submitted in response to the additional information request under the current layout, are all set out in Figure 1 of the grounds of appeal.

Should the Board consider the revised layout configuration as per the drawings submitted by way of additional information on the 22<sup>nd</sup> December, 2015 to be acceptable, it is contended that it is not necessary to demonstrate control/legal agreement over the land within the site splays. Splays do not cross any hedgerows or walls in third party ownership. There are also provisions under the Roads Act to ensure that trees, shrubs and hedges do not form a visual obstruction or road safety issue for road users.

Attached as Appendix C, is a letter from the Ballybay and Clones Municipal District stating that the road which serves the site was inspected in 2015 (December) and the hedgerows were not found to constitute a hazard. It is contended that regardless of what access configuration is used, visibility of 3 metres by 50 metres is available in both directions albeit in both directions it crosses a sliver of roadside verge but does not cross any hedgerow or obstruction that would either interfere with the visibility or could not be relocated.

In respect of the retention of the garage and shed, it is stated that the domestic garage which it is sought to retain, is essentially a variation of the garage previously approved. In fact compared to the garage approved, it would represent a reduction in width, length and height and in gross floor area. The domestic garage which is also sought to be retained to the front of the dwellinghouse is very small with a gross floor area of less than 10 square metres. The retention of the shed is fully in accordance with the requirements of the Monaghan County Council Development Plan. The planning officer's report in respect of the domestic shed does not raise any objections. It is also stated that initially after purchasing the house the appellants applied for planning permission to construct a single storey detached domestic garage and were granted planning permission (see details of Reg. Ref. 07/539). The garage was erected but not strictly in accordance with the approved plans. It is however located in the correct location on site. The differences between what was approved and what was constructed are very minor and are set out in the grounds of appeal. They amount to a reduction in 6 square metres in gross floor area over what was approved.

In relation to the proposed landscaping it is stated that the house has matured over the years and the additional works proposed will further assist in assimilating the dwelling into the surroundings.

Finally in respect of the objectors it is stated that the current applicant/appellant is an on-going dispute with the objectors who own a car dismantling premises in proximity of the subject site.

## **7.0 APPEAL RESPONSE**

It appears that Monaghan County Council have not submitted a response to the grounds of appeal.

## **8.0 OBSERVATIONS**

Three observations were submitted. These are briefly summarised below.

### **8.1 Observation from Jamie Conlon**

In respect of the proposed entrance works, it is stated that the planner's report has confirmed that the requisite sight lines are not achievable on the lands in question. The proposed development is a significant local traffic hazard and lacks required views of on-coming traffic in both directions. The proposal to remove walls and piers and put in place a new entrance configuration will not address these concerns. The problem is exacerbated when hedging is overgrown. Photographs are incorporated in the submission supporting this contention.

It is stated that the traffic patterns at this location heighten the above concerns. Traffic movements on the local road are significant and there are two other entrances which lie opposite the proposed entrance. The road is subject to significant volumes of traffic associated with other dwellinghouses, school bus, refuse trucks, oil tankers etc. Details of the type of traffic are indicated in photographs attached to the appeal in Appendix A. While the applicant argues that no serious accident has occurred to date the applicants by extension suggesting that locals should accept the development identified by the local authority as a traffic hazard and wait on a serious accident to occur before action being taken.

In respect of the shed, the observer wishes to object to the shed due to its industrial appearance and its visual impact. It is also stated that materials originating from the shed are unsightly and appear to be unsuitable for a residential site. It is suggested that products are manufactured in the shed including the construction of chicken coops.

The industrial use in the shed has given rise to noise nuisance due to high volumes of sawing, hammering, use of power tools etc. for the construction and manufacture of products on site.

Due to its location it is considered that the shed cannot possibly benefit from screening by way of landscaping. The landscaping is deemed to be pointless for amenity purposes.

## **8.2 Observation from Eugene Conlon**

This observation expresses the same concerns in relation to existing site access configuration in that the access does not comply with the original plans. It is stated that the required sight lines of 50 metres in both directions at a point 3 metres back from the road edge cannot be provided or achieved. The proposals submitted by the applicants do not comply with policies in respect of road access standards contained in Section 15.23 of the Monaghan County Development Plan. The existing utility pole clearly obstructs sight lines in a westerly direction. The applicants have demonstrated control or the reasonable prospect of requiring control of lands necessary to carry out improvement works to provide requisite sight lines. While the applicants propose to relocate the utility, no consents from the relevant utility providers have been provided. The grass margins along the roadside have not been altered or widened since the construction of the unauthorised entrance.

The certificate of compliance dated 31<sup>st</sup> May, 2007 cannot be relied upon as it is inaccurate given that the entrance clearly does not comply with Condition No. 2 of the planning permission.

Concerns again express that the garage has been used for commercial use and this includes the construction and sale of chicken coops and firewood. This gives rise to unsightly industrial type facilities and excessive noise. Activities on site were unauthorised and should cease.

Concerns were expressed that no planting or landscaping has been provided around the boundaries of the site. Reference is also made in

the observation to incorporation of an extractor fan on the western elevation of the shed.

Finally it is stated that there is no malice in the observation submitted. Any disputes of a planning nature between the parties concerned have been resolved and the matters raised in the submission only relate to traffic safety concerns.

### **8.3 Observation from Lee Conlon**

Details of the proposed entrance work and the planning history of the site is set out and it is contended that requisite sight lines cannot be achieved in this instance. It is stated that there have been huge concerns regarding visibility and traffic safety at the entrance. The grounds of appeal are incorrect in stating that the Planning Authority's concerns amount to being overzealous. It is stated that any improvement to vision splays would require third party consent. Concerns are also reiterated in relation to the presence of a utility pole in the vicinity of the entrance which restrict views and that the access road is busy and accommodates a variety of types of traffic.

Concerns in respect of the shed are also reiterated that commercial activities are undertaken at the shed and this gives rise to amenity issues in terms of visual impact on noise.

In relation to landscape it is reiterated that screening is obviously required and long overdue and that the screening required under the original application was never undertaken.

### **9.0 DEVELOPMENT PLAN PROVISION**

The site is governed by the policies and provisions contained in the Monaghan County Development Plan 2013-2019. Relevant policies are set out below.

**RDP14** – Garages should be located behind the building line of the proposed dwelling and should be reflective in terms of design and finishes.

**Policy ADP6** states proposals for garages and domestic stores and car ports for existing dwellings shall comply with Policy RDP14.

Chapter 15 of the Plan sets out Development Management Guidelines. **Section 15.23** states that a well-designed access is important to the safety and convenience of all road users, those proceeding on the public road as well as those using the access. When the Council considers proposals for new access or their intensification of use of an existing access, it will normally have a number of requirements to promote safety and avoid excessive delay. These requirements are outlined below.

It is the Council's policy to grant planning permission for development involving the creation of an access and/or the provision of visibility splays only where the applicant is able to demonstrate control or the reasonable prospect of requiring control of any lands required for the provision of any access and/or visibility splays. Planning applications involving third party lands must be accommodated by a written legal agreement between all parties.

Section 15.23.1 relates to the sight distances for a new access to a single or paired dwelling onto non-urban roads. In respect of single dwellings or two dwellings with a shared access, the minimum visibility standards are set out in Table 15.3 in respect of a Local Class 3 road (which relates to the subject site). The sight distance of 50 metres is required and 1.05 metres above the ground at a distance 3 metres back from the carriageway. The sight distance shall be measured to the nearside edge of the carriageway in both directions.

## **10.0 PLANNING ASSESSMENT**

I have read the entire contents of the file and have particular regard to the issues raised in the grounds of appeal and the various observations submitted in respect of the appeal. I have also carried out a detailed site inspection which included undertaking some measurements in respect of setback distances and site visibility splays. I consider the critical issues in determining the application and appeal before the Board are as follows:

- The issue of traffic hazard due to inadequate sight visibility splays.
- Issues regarding the retention of the domestic sheds on site.
- Landscaping issues.

## **10.1 Issues in Respect of Sight Visibility Splays**

Planning permission was refused for a sole reason which related to the perceived inadequacy of site visibility splays, particularly in an easterly direction, towards the main Regional Route R180 and the decision stated that the site configuration contravened Section 15.23 of the Monaghan County Development Plan where it is the policy of the Council to grant planning permission for a development involving the provision of visibility splays only where the applicant is able to demonstrate control or the reasonable prospect of requiring control of any land required for the provision of visibility splays. It is also noted that planning applications involving third party land must be accompanied by a legal agreement between all parties.

The grounds of appeal argue that the proposed amendments to the vehicular entrance are the same as that granted under the parent permission Reg. Ref. 01/899. The Board will note that detailed drawings in respect of Reg. Ref. 01/899 are not contained on file. Monaghan County Council have been contacted throughout the course processing this appeal with the view to obtaining these detailed drawings. However the Council have informed the Board that the documents and drawings in respect of this application have been mislaid. Details of the site plan are contained on page 6 of the grounds of appeal in Figure 1. I consider that there is validity in the appellants' claim that the layout and configuration of the access under the approved parent permission (Reg. Ref. 01/899) and the site layout plan as submitted in response to the further information request are for all intents and purposes the same. The critical issue in my view is the fact that the location of the entrance along the roadside entrance is virtually the same under the original and most current proposal. Under the most recent proposal the gates are located slightly further back from the public road. The fact that the proposed vehicular entrance is located further back from the public road will in my view be more appropriate from a safety point of view creates a greater access and egress depth between the edge of the public road and the gated access to the dwelling.

However more critically important in my view is the fact that the entrance gates are located in the same position on the roadside boundary on both the original application and the most current application before the Board and therefore offer the same vision splays in both directions. It is an important consideration in my view as under the original application the Planning Authority determined that adequate

vision splays were available at this point along the roadside boundary in both directions and presumably on foot of this conclusion decided to grant planning permission on the grounds that the proposed dwellinghouse was in accordance with the proper planning and sustainable development of the area. I consider that for all intents and purposes a similar conclusion could be reached in respect of current revised proposals before the Board. I refer the Board to the photographs attached and in particular Photograph No. 5. The Board will note that this photograph was taken from a point 3 metres back from the edge of the road and also at a point in the middle of the proposed relocated gateway in accordance with the stipulations set out in the Development Plan. The Board will also note that a car is parked 50 metres to the east of this point along the roadway. It is clear that the car is clearly visible in the photographs attached. Therefore any car travelling on the left-hand side of the road towards the proposed entrance is visible and as such requisite vision splays are available in accordance with the provisions of the Development Plan.

I therefore consider that the proposed relocated entrance as indicated in the revised drawings would satisfy the criteria set out in the Development Plan and would not result in inadequate vision splays and by extension constitute a traffic hazard. The Board will also note that the replacement of the pillars with a wooden fence would also help achieve slightly greater vision splays than that currently afforded at this point. I furthermore concur with the appellants in the grounds of appeal that third party lands are not required in order to achieve requisite sight distances and that as in the case of all third class public roads there is a requirement under the Roads Act that landowners or the Planning Authority carry out appropriate cutting back of hedges and trees in order to maintain sight lines.

With regard to sight lines in a westerly direction, I consider these sightlines to be more than adequate to comply with the minimum standards set out in the Development Plan and therefore do not constitute a traffic hazard. It would nevertheless be appropriate that the existing utility pole be relocated as part of any grant of planning permission and this can be addressed by way of condition.

With regard to traffic volumes on the road. I inspected on the site mid-morning on a weekday. During a 20 minute period under which I conducted my site investigations only one vehicle, a post van travelled on the road in question. I can only conclude that the road accommodates minimal traffic, typical of 3<sup>rd</sup> class country road.

## 10.2 Retention of Sheds on Site

I note that the planner's report does not consider the subject shed to be visually obtrusive relative to the surrounding roads at this locality and that the footprint of the shed occupies the same site as was previously approved under Reg. Ref. 07/1539. The report concludes that "*given the comparative scale of the overall massing of the shed as existing relative to the previously approved garage, I do not consider that the shed is unacceptable in terms of scale/massing or its position within the site*". I would generally concur with the above conclusions having visited the site in question. The Board will note however that I did not gain access to the site in question due to the fact that the gates were locked and there were guard dogs in the front garden of the dwellinghouse. However I am satisfied having viewed the shed from the public road and at vantage points in the vicinity that it is not visually incongruous in the context of the surrounding environment. I further note that the shed is set into the corner of the subject site and is surrounded by hedgerows.

The observation submitted expressed concerns, not only in respect of the visual amenity, but also that the shed in question incorporated commercial uses which was adversely impacting on the amenity of the surrounding area. Although as previously indicated, I did not enter the shed in question, I noted no commercial activity was taking place at the time of site inspection. The grounds of appeal indicate that the shed in question is used for domestic purposes only. If the shed has been used for commercial purposes in the past I consider that this should be the subject of a separate planning application. I would consider it sufficient in this instance that the Board attach a condition requiring that the shed in question be used for ancillary domestic purposes only as specified in the original planning application and shall not be used for any commercial or trading purposes.

If the Board consider that the proposed reconfiguration of the access to the dwelling constitutes a traffic hazard it should in my opinion consider issuing a split decision in (a) refusing planning permission for the proposed entrance arrangements and (b) grant retention of planning permission for the shed subject to the shed being used for ancillary domestic use only.

I note that the second shed on site is a smaller structure less than 10 sq.m in size and appears to be used for domestic purposes only. Again I consider that the Board can grant planning permission for the retention



of this structure as it gives rise to no significant planning or amenity issues.

### **10.3 Landscaping**

In the case where the Board consider it appropriate to grant retention of planning permission I consider it appropriate that standard landscaping condition be attached to address any landscaping concerns raised in the observations on file.

### **11.0 Appropriate Assessment**

Having regard to the nature and scale of the proposed development and the receiving environment and the fact that minimum construction works are to be undertaken on the subject site, I consider that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **12.0 RECOMMENDATION**

Grant retention of planning permission for the development in question in accordance with the reasons and considerations set out below.

#### **REASONS AND CONSIDERATIONS**

It is considered that the retention of the shed, front entrance, walls, piers, gates and all associated development works would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

#### **CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the information received on 22<sup>nd</sup> day of December 2015, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the

development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The proposed access arrangements together with a new gate and concrete post and timber rail boundary fence shall be constructed in accordance with the drawings submitted to the planning authority on 22<sup>nd</sup> day of December, 2015.

**Reason:** In the interest of traffic safety.

3. The existing telegraph pole to the immediate east of the entrance shall be removed and relocated behind the new fence. Details of the relocation shall be agreed with the relevant public utility company prior to the commencement of development.

**Reason:** In the interest of traffic safety.

4. The existing single storey domestic shed in the south-western corner of the site shall be used for purposes ancillary to the domestic dwelling and shall not be used for any commercial activity including commercial storage.

**Reason:** In the interest of surrounding residential amenity.

5. The site shall be landscaped in accordance with the details submitted on 22<sup>nd</sup> day of December, 2015 using only indigenous deciduous trees and hedging species. The scheme shall include the following:

- (a) The establishment of a hedgerow to the rear of the proposed new concrete post and timber rail fence to the immediate east of the proposed entrance.

and

- (b) The planting of new hedgerows together with trees at 15 metre intervals around the remaining boundaries of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with

others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the rural landscape in the interest of visual amenity.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Paul Caprani,  
Senior Planning Inspector.**

**26th May, 2016.**

**sg**