



An
Bord
Pleanála

Inspector's Report PL27.248221

Development	Retention of partially converted stable building to storage facility, retention of storage sheds as constructed on site, and the retention of containers for storage, all for storage of film props.
Location	Clora, Nun's Cross, Ashford, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	16/866
Applicant(s)	Karen Bennett
Type of Application	Retention permission
Planning Authority Decision	Grant, subject to 5 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Michael Ryan on behalf of Elizabeth Ryan's Estate
Observer(s)	None
Date of Site Inspection	19 th May 2017

Inspector

Hugh D. Morrison

1.0 Site Location and Description

- 1.1. The site is located towards the north western extremity of Ashford in an area of housing with a church and a school further to the north west. This site is accessed from the south, off the R763, which links Ashford to Annamoe, and it lies at a short remove from the Vartry River, which runs to the south west.
- 1.2. The site is of regular shape and it extends over an area of 1.06 hectares. This site is relatively flat and it accommodates buildings in its southern and north eastern portions, i.e. storage sheds and a dwelling house and the subject building, respectively. These sheds are accompanied by containers and the subject building is accompanied on its northern side by a line of storage units. All of the buildings are served by an open surfaced area that facilitates vehicular parking, circulation, and turning. The majority of the northern portion of the site is laid out as an exercise area and paddocks. The site boundaries are denoted by means of stone walls.

2.0 Proposed Development

- 2.1. The proposal comprises the following elements:
 - The retention of the partially converted stable building in the north eastern portion of the site as a storage facility for film props, and
 - The retention of a line of low-level sheds on the northern side of the stable building for the storage of film props.
- 2.2. The stable building has a floorspace of 579.4 sqm and the storage facility within it would extend over 492 sqm of this floorspace. The low-level sheds have a floorspace of c. 25 sqm.
- 2.3. Following a request for further information, the applicant submitted a more detailed site layout plan, within which car and truck parking spaces are denoted and the footprints of containers are shown beside and within the vicinity of the existing storage sheds in the southern portion of the site.

3.0 **Planning Authority Decision**

3.1. **Decision**

Retention permission was granted subject to 5 conditions, which includes ones relating to the provision of a footpath and the laying out of car parking spaces. A further condition requires that the storage facility be used solely for film props.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

Further information was requested on the following matters:

- Given that film prop storage space was previously permitted, justification for an expansion in this storage space.
- The submitted site layout plan does not accord with the “facts on the ground”.
- Any revised site layout plan to illustrate how the car parking standards would be met.
- Employee water supply and toilet facilities to be made explicit.
- Footpath along the front boundary has been damaged beyond repair and so a replacement one is needed.

3.2.2. Other Technical Reports

Area Engineer: Following receipt of further information, condition requested concerning the design of the replacement footpath.

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

See grounds of appeal.

4.0 Planning History

- 98/8531: Retention of hay barn: Permitted.
- 98/9301: Two storey rear extension and two dormer windows to dwelling house: Permitted.
- 00/2547: Ten new stall stable units with associated storage areas and to widen the access road: Permitted.
- UD 4372 C: Material change of use of the bulk of the floor area of the building permitted under 00/2547 to that of the storage/hiring out of props for the film/television industry.
- 02/6462: Retention sought for the extension to the existing film prop storage area: Further information requested, but not provided: Application deemed to be withdrawn.
- 03/8063: Retention of 258.30 sqm extension to existing film prop storage area, i.e. the storage sheds in the southern portion of the site. (The red edge of the application site encompassed the same site as is now the subject of the current application). Realignment of access road and of junction with the main road: Permitted, subject to conditions that include the works to the site access and the requirement that any change of use be subject to planning permission.

5.0 Policy Context

5.1. Development Plan

Wicklow County Development Plan 2016 – 2022 (CDP) identifies Ashford as a small town and Volume 2 includes within it a Town Plan for Ashford (TP). This Plan shows the site as lying within the settlement boundary and in an area zoned existing residential, which is subject to the objective “To protect, provide and improve existing residential amenities of adjoining properties and areas while allowing for infill residential development that reflects the established character of the area in which it is located.” It also shows an adjacent church to the west as being a protected

structure (18-05) and lands to the north, which are the subject of a Specific Local Objective for the provision of community/educational and residential uses.

The CDP does not include a land use matrix. Instead the Planning Authority undertakes to determine each proposal on its merits and it shall only permit the “development of uses that enhance, complement, are ancillary to, or neutral to the zoning objective. Uses that are materially inconsistent with and detrimental to the zoning objective shall not be permitted.” General guidance as to appropriate uses in residential zones is given. Commercial storage is not included within this guidance.

One of the Economic Development and Employment Objectives in the TP is ASH5, which states “To facilitate spin-off film related industries on appropriately zoned lands within the plan area that complement the existing and proposed expanded film studios to the north of the plan area.”

5.2. Natural Heritage Designations

The Murrough SPA (site code 004186)

The Murrough Westlands SAC (site code 002249)

The Murrough proposed NHA (site code 000730)

6.0 The Appeal

6.1. Grounds of Appeal

- Access to the site is over the appellant’s land. The applicant has an agricultural right of way over this access only.
- The late Mrs Elizabeth Ryan constructed the subject building as stables for private use only.
- The site is allegedly being operated in a manner contrary to health and safety, e.g. no fire certificate has been obtained and adequate car parking and toilet facilities are unavailable. The appellant is liable for any injury claims arising from the use of the site and yet his insurance would not cover such claims.
- The site is in a residential area and it is subject to an action plan objective.

6.2. Applicant Response

The applicant begins by questioning the validity of the appeal on the grounds that Michael Ryan is not cited in the Probate Office as being the personal representative of the late Elizabeth Ryan and so proof is needed that he can act in this capacity. She then proceeds to respond to the above cited grounds of appeal as follows:

- The applicant and her mother are sole owners of the site and adjoining land to the north is in separate ownership to that of either the applicant or the appellant. (Submitted copies of the relevant folios from the Land Registry testify to this being so). The question of a right of way affecting the appellant does not therefore arise. Likewise, the question of liability for any injury on the site does not arise.
- The importance of the use to the County's film industry is emphasised.
- The appellant's comments concerning health and safety appear to be vexatious.
- The residential amenity of the area is better served by the storage use than the former use of the sites as stables.
- The current use generates fewer traffic movements than its predecessor.
- The applicant is in the process of preparing an application for a fire certificate. She anticipates lodging this application, once a final grant of planning permission has been received.
- Contrary to the appellant's assertions, the current use of the site is well provided for, e.g. it enjoys car parking spaces, a truck parking space, toilet and administration facilities, and security gates.
- The applicant has conducted a business from the site for the last 15 years, which, while still modest, has enjoyed some growth. The draft permission would regularise matters on the site from a planning perspective and, as such, she raises no objection to the conditions attached therein.

6.3. Planning Authority Response

None

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

I have reviewed the proposal in the light of the CDP, relevant planning history, the submissions of the parties, and my site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use and amenity,
- (ii) Access,
- (iii) Miscellaneous,
- (iv) Water, and
- (v) AA.

(i) Land use and amenity

1.1 The site accommodates two sizeable sheds: one in the southern portion of the site, which is authorised for use as a storage facility for film props, and one in the north eastern portion of this site, which is authorised for use as stables. Under the current proposal, retention of the majority of the floorspace of this latter shed for use as a storage facility for film props is proposed, too.

1.2 The TP shows the site as lying within the settlement boundary around Ashford and in an area that is zoned existing residential. The relevant zoning objective is “To protect, provide and improve residential amenities of adjoining properties and areas while allowing for infill residential development that reflects the established character of the area in which it is located.” Accompanying guidance on appropriate land uses does not include commercial storage. Uses should only be permitted where they would enhance, complement, be ancillary to, or neutral towards the zoning objective and uses that would be materially inconsistent with and detrimental to this objective shall not be permitted.

1.3 Ordinarily, a commercial storage use would be materially inconsistent with an existing residential zoning. However, in this case, there are a number of factors that need to be weighed. These are as follows:

- Planning permission has previously been granted for the storage use in question within another shed on the site. A condition attached to this permission requires that any change of use be the subject of a further permission, thereby distinguishing the permitted storage use from other ones.
- The storage use is a low intensity use insofar as call upon the film props occurs on an intermittent basis and so activity on site, in terms of the loading and unloading of vehicles and associated traffic movements to and from the site, reflect this pattern of usage. Accordingly, this use can be distinguished from warehouse/distribution centre uses, where a higher intensity of usage occurs.
- The authorised use of the subject building is that of a stable block comprising 10 stables and associated storage areas. The applicant contends that the impact on the residential amenities of dwelling houses within the vicinity of the site would be greater from this use than from the subject use. Clearly, the retention of 4 stables means that the potential range of impacts from stabling would remain but their intensity would be reduced. (On the day of my site visit, I observed only a donkey and a Highland bullock on the site).
- Objective ASH5 of the TP states to “To facilitate spin-off film related industries on appropriately zoned lands within the plan area that complement the existing and proposed expanded film studios to the north of the plan area.” While the appellant draws attention to the residential zoning of the site, this zoning is for existing residential use rather than new residential use and so it does not form part of the lands identified in the TP for new housing supply.

1.4 In the light of the above factors, I consider that the Board would, in this case, be justified, under Section 37(2)(a) of the Planning and Development Act, 2000 – 2015, in acceding to a material contravention of the zoning of the site, provided the use is subject to a condition which requires that any change of use be the subject of a further permission.

- 1.5 The description of the current proposal includes the retention of a row of low-level storage units to the north of the stable block. These sheds back onto a high wall which effectively screens them from external westerly views of the site. While they would be visible within easterly views available from the church and school grounds to the north west of this site, their green finishes and modest size would ensure that they are compatible with visual amenity. Accordingly, I raise no objection to their retention insitu.
- 1.6 Elsewhere on the site there are several containers and racks of external shelves. Following receipt of further information, the applicant has advised that these containers are both used for storage and are themselves used as props from time-to-time. This information was the subject of a public consultation exercise and one of the conditions attached to the draft permission effectively limits open storage to these containers. The racks of external shelves were thus excluded from the ambit of this permission.
- 1.7 I consider that, as all but one of the containers is painted green and sited in a position adjoining the existing storage shed, their presence on the site does not tend “to draw the eye”. The remaining container is painted green, too, and it is sited in a discrete position in the south western corner of the site. However, I consider that the racks of open shelves represent visual clutter and so they should be removed and the items displaced thereby stored in either the storage sheds or the containers. In the light of these considerations, I endorse the Planning Authority’s aforementioned approach to the conditioning of open storage.
- 1.8 I conclude that, notwithstanding the existing residential zoning of the site and in the light of the specific circumstances pertaining to this site and the atypical use proposed for retention, the Board would be justified in acceding to permission under Section 37(2)(a) of the Planning and Development Act, 2000 – 2015.

(ii) Access

- 2.1 The site is accessed off the R763. This regional road is of mildly meandering alignment within the vicinity of this access point and it is subject to a continuous white centre line and a 50 kmph speed limit. Forward visibility available to drivers turning right into the access is somewhat constrained. Sightlines available to

drivers exiting this access are good, i.e. the site layout plan depicts that x and y dimensions of 2.4m and 90m would be available in either direction.

2.2 During my site visit I observed that the footpath across the mouth of the access to the site lacks definition and is in need of reconstruction. The Area Engineer has drawn attention to this need, too, and so, following receipt of further information, the revised site layout plan is now accompanied by a note undertaking to construct a 27m long by 2m wide footpath, which would be dished to facilitate vehicular access/egress. The Planning Authority's draft permission contains a condition that requires agreement on and subsequent construction of this footpath within defined timelines. Such a condition is appropriate to a retention permission.

2.3 The revised site layout plan also shows the formalisation of parking provision within the site and this, too, is appropriately the subject of a condition which requires that such formalisation occur within a defined timeline.

2.4 I conclude that the proposed access and parking arrangements would be appropriate, subject to the provision of a footpath in conjunction with the former and the formal laying out of the latter.

(iii) Miscellaneous

3.1 The appellant raises a series of issues.

- Firstly, he questions the applicant's right of way over the access road to the main body of the site, which he states she can only exercise for agricultural purposes.
- Secondly, he alleges that the applicant has not attended to health and safety requirements and that he would be liable for any injury claims arising from the use of the site.

3.2 The applicant has responded by initially questioning the appellant's right to appeal. However, as he was the signatory, along with the late Elizabeth Ryan, to a letter of objection at the application stage, he has such a right.

3.3 Turning to the two matters raised, in relation to the first, the applicant and her mother are the sole owners of the site in its entirety and so the questions of right of way and liability raised by the appellant do not arise. In relation to the second,

she undertakes to apply for a fire certificate on receipt of a final grant of permission and other matters pertaining to parking, toilet and administration facilities, and security gates have all been addressed in her response to the Planning Authority's request for further information.

3.4 I conclude that there are no outstanding matters under this heading.

(iv) Water

4.1 The site is served by the public water mains and sewerage system. Surface water drains to an on-site soakaway.

4.2 Appendix 13 of the CDP sets out a Strategic Flood Risk Assessment of the County. The site is shown in this Assessment as not being at risk from fluvial flooding. The website floodmaps.ie does not identify any flood events within the vicinity of this site. Likewise, the applicant has stated, in the completed application forms, that she has no knowledge of flooding on the site.

4.3 I conclude that there are no outstanding water issues relating to the site.

(v) AA

5.1 The site is neither in nor near a Natura 2000 site. The Vartry River flows at a short remove to the south west of this site. This River passes through The Murrough SPA (site code 004186) and The Murrough Westlands SAC (site code 002249) where it enters the Irish Sea to the north of Wicklow Town. I am not aware of any source/pathway/receptor route between the site and these Natura 2000 sites.

5.2 Having regard to the nature and scale of the development proposed for retention and the proximity of the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the development proposed for retention has a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. That this proposal be permitted.

9.0 Reasons and Considerations

Having regard to the planning history of the site and the atypical nature of the storage use proposed for retention, it is considered that, subject to conditions, this use would be appropriate to the stable block and adjoining row of storage units, notwithstanding the fact it would entail a material contravention of the existing residential zoning of the site set out in the Ashford Town Plan, which is contained within the Wicklow County Development Plan 2016 – 2022. The use would be compatible with the visual and residential amenities of the area. Traffic generation would be capable of being satisfactorily handled by means of the access point from the R763, subject to the reconstruction of a dished footpath across this point. No Appropriate Assessment issues would arise. Consequently, the proposed retention of the storage use for film props in the stable building and the retention of the adjoining storage units for the same use would accord 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, as amended by the further plans and particulars submitted on the 3rd day of February 2017 and by the further plans and particulars received by An Bord Pleanála on the 11th day of April 2017, 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. Within 2 months of the date of this Order, the developer shall submit to and agree in writing with the Planning Authority, a detailed design for the dished footpath across the access point to the site from the R763.

Within 4 months of the date upon which the detailed design is agreed, the dished footpath shall be fully constructed.

Reason: In the interest of road safety.

3. Within 2 months of the date of this Order, the developer shall formally lay out the parking spaces shown on the revised site layout plan that was

submitted to the Planning Authority on the 3rd day of February 2017.

Reason: In order to facilitate efficient off-street parking.

4. Except for the containers shown on the revised site layout plan that was submitted to the Planning Authority on the 3rd day of February 2017, no open storage of film props shall occur at any time on the site.

Reason: In order to safeguard the visual amenity of the area.

5. The retained partial conversion of the stable block, the retained storage sheds, and the retained storage containers shall be used for the storage of film props only and for no other purpose within Class 5 of Part 4 of Schedule 2 to Article 10 of the Planning and Development Regulations, 2001, as amended, unless prior planning permission is obtained.

Reason: To order to afford the Planning Authority control over the use, in the interest of amenity and the proper planning and sustainable development of the area.

6. Within 2 months of the date of this Order, the developer shall pay to the planning authority a financial contribution of €21,156 (twenty-one thousand one hundred and fifty-six euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within 2 months of the date of this Order 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. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

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

Hugh D. Morrison
Planning Inspector

30th May 2017