



An  
Bord  
Pleanála

## Inspector's Report PL.19.248494

### Development

- (a) Retention permission for site works as completed consisting of removing topsoil and placing of hardcore / hardstanding over site area and removal of roadside hedge and replacement with earthen embankment and screen planting and
- (b) Permission to construct new site entrance and associated site works for the storage of commercial vehicles / plant machinery pertaining solely to business.

### Location

Killurin, Killeigh, Co Offaly

### Planning Authority

Offaly County Council.

### Planning Authority Reg. Ref.

PL2/16/394.

### Applicant(s)

David Dunne.

### Type of Application

Permission to retain and permission

### Planning Authority Decision

Grant permission subject to conditions

|                                |                            |
|--------------------------------|----------------------------|
| <b>Type of Appeal</b>          | Third Party                |
| <b>Appellant(s)</b>            | Tony and Breeda Said.      |
| <b>Observer(s)</b>             | None.                      |
| <b>Date of Site Inspection</b> | 4 <sup>th</sup> July 2017. |
| <b>Inspector</b>               | Bríd Maxwell.              |

## 1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.176 hectares within the settlement of Killurin which lies approximately 7km to the southwest of Tullamore Co Offaly. The site is accessed via a local road off the R421 and is within a row of established dwelling sites. The front boundary of the appeal site is defined by a clay mound with hedge planted over and remaining boundaries are also hedged. The site is infilled with aggregate stone. The site is surrounded by residential dwelling sites including that adjoining to the southwest which is the first party's dwelling site workshop/store and business premises Megs Fabrication Ltd. Access to the appeal site is from the established residential site entrance. On the date of my site visit, I noted a number of vehicles parked on the appeal site including three cars an articulated lorry, a rigid and a vacuum tanker parked on the site. I also noted limited open storage of timber pallets and a steel frame.
- 1.2 The site is within the settlement envelope of Killurin Sráid (pop 120-140<sup>1</sup>) which is aptly defined within the Offaly settlement hierarchy as a very small, embryonic rural settlement which has a loose gathering of existing development mainly housing but with some services. Killurin is characterised by residential properties on generous sites in a linear pattern fronting onto the R421 and connecting roads, a small number of farmsteads and also has a GAA club grounds located centrally within the settlement and to the west of the appeal site.

## 2.0 Proposed Development

- 2.1. The proposal seeks permission for retention of site works as completed consisting of removal of top soil and placing of hardcore / hardstanding over site area and removal of roadside hedge and replacement with earthen embankment and screen planting. Permission is also sought for the construction of a new site entrance and associated site works for the storage of commercial vehicle / plant machinery pertaining to applicant's business.

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<sup>1</sup> Killurin Sráid Settlement Plan, Offaly County Development Plan 2014-2020

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Following an initial request for additional information regarding details of traffic arising and capacity of road to deal with same and detail of type of plant and machinery to be stored on site the Council notified its decision to grant permission subject to 3 conditions which included the following:

Condition 2 requires that *“The hard standing area granted under this permission shall be operated and owned by the occupier of the applicants adjoining homestead (as indicated on the submitted site layout plan). The hard standing area shall not be rented or sold separately from the adjoining dwelling house.”*

Condition 3. Surfacewater to soakways. No runoff to road or adjoining properties. Noise emissions limits.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

Planner’s initial report notes location within the defined Sráid settlement boundary. Recommends additional information in respect of traffic levels arising and details of type of plant and machinery to be stored. Seeks proposals to control any pollutants and an indication of applicant’s willingness to accept a condition restricting the use to an operation in conjunction with the existing house. Final report recommends permission subject to conditions.

##### **3.2.2. Other Technical Reports**

Area Engineer’s report recommends referral to road design department.

Roads Section initial report sought additional information traffic arising and a demonstration of road capacity.

Final report indicates no objection.

Environment and Water Services Report indicates no objection subject to conditions.

### 3.3. Third Party Observations

Submission by the appellants Tony and Breeda Said residents of the dwelling directly across the road from the site. Concerns regarding impact on residential amenity. Vehicles to be accommodated and concern that the proposal will facilitate the expansion of the business on the site. Traffic safety and road capacity concerns. Road is not suitable for regular HGV traffic.

### 4.0 Planning History

**PL2/11/342** Permission granted June 2012 to David Dunne for shed / workshop for the storage and maintenance of the Applicants commercial vehicles.

Condition 4 requires that:

*“The existing dwelling on site and the proposed shed / workshop shall be occupied as a single unit and the shed / workshop shall not be sold, let or otherwise transferred or conveyed save as part of the dwelling. The shed / workshop shall not be used for overnight accommodation and shall be used solely for uses ancillary to the main residential use of the dwelling and for the storage of vehicles. No industrial manufacturing or retail activity shall take place in the proposed shed / workshop.*

*Reason: To restrict the use of this garage in the interests of residential amenity.*

Condition 8. Development contribution €2,637.50.

Condition 9. Any environmental nuisance during construction to be contained at an acceptable level. Noise emission limits.

**PL2/01/0870** Approval for dwellinghouse garage/fuel store and septic tank  
November 2001.

**PL2/00/739** Outline permission for dwellinghouse, garage/fuel store and septic tank.  
October 2000.

**03/178** Permission for dwellinghouse, garage / fuel store and septic tank.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The Offaly County Development Plan 2014-2020 refers.

- Within the settlement hierarchy Kilurrin is described as a Tier 7 Sráid described as follows: *“Sráids are very small, embryonic rural settlements. Sráids have a loose gathering of existing development mainly housing but with some services. New development should reflect this existing settlement pattern. Sráids have the potential to attract high quality individual housing or private site developments to attract population growth and offer an alternative to rural housing where appropriate.”*  
*“Given the Sráids’ existing and envisaged scale and size, development envelopes are delineated and no formal zoning has been applied. Residential and other development which is appropriate in scale and character of the Sráid concerned, and subject to servicing, amenity and environmental limitations, including the potential for interaction with European Sites, will be encouraged within the development envelope. Sráids are considered as being a sustainable form of development in the longer term, and will create a greater sense of place and community in these areas. They will help stabilise and consolidate population levels, in an orderly and sustainable fashion, within those rural areas which have experienced a decline. They will also act as a planning tool to ensure that small settlements which come under pressure for development do not become over-developed.”*
- SSP-15(c) It is Council policy to facilitate the provision of appropriately scaled commercial development within the Sráids. This may include limited new mixed-use development, including employment generating development, childcare and other appropriate commercial development. This will bring variety and vitality to the settlement, providing a wider choice of services and assist in creating a ‘centre’ with a greater sense of place.”
- Economic and Enterprise Strategy is set out in Chapter 2 and includes the following:
- EntP-04 It is Council policy to support local employment creation where it can mitigate against long distance commuting.

- EntP-08 It is Council policy to co-operate with and facilitate Government agencies, and other bodies where feasible, in encouraging home-based employment. This is in accordance with the National Spatial Strategy's policy of "Bringing people and jobs together" and includes the provision of small-scale individual enterprises. Proposals which involve the change of use and/or new development for purposes of home-based employment will be generally considered favourably where it can be clearly demonstrated that, a) the proposal is of an appropriate scale for its location; b) there are no adverse environmental, health and safety impacts and c) the proposal is without prejudice to residential amenity d) the proposal will not detract from the vitality and viability of Town or Village Centres.
- The Killurin Sráid Plan sets out objectives for the development of Killurin which includes provision for development in a properly planned and coherent manner with the GAA pitch remaining as the focal point, improvement of the road network and provision of gateway features to contribute to traffic calming on approach roads and a planting scheme to ensure the retention of existing mature trees and hedgerows.

## 5.2. Natural Heritage Designations

- Charleville Wood SAC 2.7km
- Screggan Bog NHA 1km
- Hawkswood Bog NHA 2.5km
- Slieve Bloom SPA (Site Code 004160) c7km
- Clara Bog SAC 11km

Clonaslee Eskers and Derry Bog SAC c6km

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal is submitted by Sean Lucy and Associates Town Planning Consultants on behalf of the appellants Tony and Breeda Said. Concerns relate to

- Type of vehicles to be stored at the facility.

- Use of the site to accept deliveries linked to an unauthorised industrial use for the steel fabrication business.
- Question current use and authorisation status of the adjacent site.
- Width of the road is only 3m not adequate for HGV traffic.
- Appellants have a 4m setback in front of their house which is not part of the public road and no permission has been sought for use of this as part of HGV turning to gain access or egress.
- Permission granted for shed / workshop for the storage and maintenance of applicant's own vehicles and equipment associated with the applicants drain cleaning and jetting business. Question necessity for such a large site given that the applicant's agent states that there will be no increase in traffic arising from the proposed retention.
- Job advertisement for Megs fabrication identifies the nature of the business with goods inwards and dispatch outwards
- Photographic evidence provided indicates that the site is accessed by HGV traffic on a regular basis.
- Loss of rural and residential amenity arising from traffic, noise dust.
- Application fails to justify the need for development for which retention is sought.
- Development is out of character with the area and would be contrary to the primary requirement to protect the residential amenity of the area.
- Appeal submission is accompanied by USB showing photographs of HGV traffic and other heavy traffic accessing site.

## 6.2. Applicant Response

6.2.1 The response on behalf of the first party is submitted by Ger Fahy Planning and is summarised as follows:



- MEGS Fabrication operates family business from the site. Company is involved in desludging maintenance and repair of wastewater treatment plants and maintenance and repairs of reservoirs and pumping stations.
- There has been no material change in use of the associated site.
- Having regard to the planning history of the site use of the workshop for the maintenance and repair of vehicles and equipment associated with the Megs fabrication business which is fully authorised under Ref 11/342.
- There is no commercial fabrication of steel carried out on site save for that which is ancillary to their main operations as a drainage contractor.
- The existing commercial unit is small in scale and sited in such a way that it does not detract from the character of the area. Parking area small in scale and does not detract from the proper planning and development of the area.
- The proposed development is for a parking area for vehicles associated with the permitted use under 11/394 which provided for the storage and maintenance of the applicants own vehicles machinery and equipment associated with the applicants drain cleaning and jetting business under their registered company name MEGS Fabrication Ltd.
- Development Plan Policies clearly support the growth of indigenous business such as MEGS.
- Development proposed is a parking area and will for the majority of time be inactive.
- Vehicles to be stored at the site include one articulated lorry, one rigid, one steel frame trailer, one 6,000-gallon whale vacuum tanker, transit van, jeep, Toyota Dyna, Mitsubishi jeep and teleporter.
- Use within the commercial workshop is fully authorised and no material change of use has taken place.
- Width of the road is 5.7m within the vicinity of the appeal site.
- Setback in front of the appellant's dwelling required as condition of relevant permission and was intended to facilitate future road improvements. This land effectively ceded to the local authority and consent for use not required.

- Traffic movements in appellant's photographs accounted for in the legitimate operation of the business on site.
- No steel fabrication being carried out on the site. No industrial manufacturing or retail activity is taking place within the shed / workshop.
- Job advertisement for a 3 day per week position for "warehouse store person" more accurately described as "stock controller" in respect of fittings and parts.
- Limited HGV traffic movement arising.
- Parking area will have limited impact on residential amenity.
- Basis of the appeal is based on the misunderstanding that the applicant is operating a steel fabrication business from the workshop which is not the case.
- Report by Transport Planning Services Ltd provide a technical traffic and transportation review
- Notes that the new vehicular access is of sufficient width to enable heavy vehicles to undertake a single inbound or outbound turning movement from the site into or out of the L6008. A swept assessment indicating the turning movement of a 15.5m articulated vehicle is shown on drawing 117-A34-LP01
- Section in front of the appellant's house is in charge of Offaly County Council. Recommend that if the Board is minded to grant permission the gravelled section of road widening adjacent to the application site be removed and replaced with a macadam overlay.
- The applicant operates a drainage service to state bodies within the Leinster area which operates between 08:00 to 17:00 but when required attend emergency can generate vehicular activity outside these hours.
- The surrounding road network carries limited traffic levels and can accommodate the traffic generated by the applicant's operation.

### 6.3. Planning Authority Response

6.3.1 The Planning Authority submission notes that planning permissions are self-contained and defined in terms of the development applied for. The Planning Section were not aware of contracts which the developer had with Offaly County Council or Irish Water in terms of the planning application.

### 6.4. Further Responses

6.4.1 The Third Party Appellant's response to first party response to the appeal is summarised as follows:

- Applicant's business would appear to have outgrown the site and road which it serves and should be relocated to a more suitable industrial unit on appropriately zoned lands.
- Evidence indicates that the site provides a commercial steel fabrication operation.
- Permission pertaining to the workshop on the site restricts use to storage and prohibits industrial, manufacturing or retail activity.
- Nature of the business has changed. Comparison of planning application 2011 and current application and description from "drain cleaning and jetting" to "drainage, desludging, maintenance and repair of wastewater treatment plants and the maintenance and repair of reservoirs and pumping stations".
- What is on site is an industrial business which manufactures steel parts and structures for distribution to Irish Water facilities around Leinster. There is no permission on site for the operation of a business. The only permission in evidence relates to the overnight storage of the applicant's vehicles associated with "drain cleaning and jetting business".
- The attempt to distance the current retention application from the neighbouring use is in contravention of condition 4 of 11/342 and ignores the intimate and intertwined connection between the two sites.

- Whilst ownership is a legal matter it is not accurate to imply that simply by virtue of providing a setback to the front of their site the appellants have lost control / ownership of this portion of land.
- Report of TPS has been framed with reference only to the applicant's vehicles and those of staff members. No consideration has been provided with respect to deliveries and types of vehicles associated with same.
- The undertaking of the new works on the appeal site which facilitates the expansion of an unauthorised industrial use and the opening of an industrial entrance across the road from their residence in combination with the increased regularity of HGV traffic movements has created a new unauthorised impactful and unwanted development which is incompatible in this residential area.
- Submission is accompanied by a copy of letter sent to the local authority alleging that fabrication business has ceased operation from the site believed to be as a result of impending visit of An Bord Pleanála Inspector. Request that an enforcement file be opened.

## 7.0 **Assessment**

7.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposal and all submissions, I consider that the key issues arising in this appeal can be considered under the following broad headings:

- Principle of development
- Adequacy of the application and question of unauthorised use.
- Impact on residential and rural amenity.
- Other matters.

## 7.2 **Principle of Development**

7.2.1 On the question of the principle of development, the site is located centrally within the settlement envelope for the Killurin Sráid. The development plan notes that Sráids evolved as a measure to be implemented in order to act as an alternative to piecemeal development activity, to provide alternatives to rural houses in the countryside and also to address rural de-population and decline in certain areas, in particular within the identified traditional rural settlement network. The relevant settlement policy supports appropriately scaled commercial development to ensure vibrancy and vitality and a greater sense of place. Economic and Enterprise strategy supports local employment creation and sets out the objective of the Council to encourage, the development of small to medium scale indigenous industries and services.

7.2.2 The Sráid Plan for Killurin includes the key objectives that development by carried out in a properly planned and coherent manner. Having reviewed the policy context it is clear that the principle of development of the site for enterprise /employment is acceptable in the context of the settlement strategy and economic development policies and objectives of the Development Plan subject to the relevant safeguards in terms of appropriateness of use to the scale and character of Killurin Sráid, servicing, amenity and environmental limitations including the potential for interaction with European Sites and impact on established residential amenity.

### **7.3 Adequacy of the application and question of unauthorised development.**

7.3.1 The application is partly one for retention and this in itself poses questions in regard to the first party's approach to the planning process. The third party appellant has made allegations of unauthorised development on the adjoining associated site comprising a change of use from an authorised "*shed / workshop for the storage and maintenance of applicant's own vehicles and equipment associated with the applicant's drain cleaning and jetting business*" to an industrial steel manufacturing business. The third party alleges that a grant of permission on the appeal site would facilitate the expansion of an unauthorised use. The first party has denied any such change of use and indicates that any operations currently being carried out on site are ancillary to the permitted use. On the date of my site visit I did not note any

industrial operations on the site or the adjacent site. I note that the letter attached to the third party appellant's ultimate submission in response to the first party response to the appeal suggests that the alleged unauthorised steel fabrication business has ceased from approximately 17<sup>th</sup> May 2017.

7.3.2 I note that the issue of enforcement is a matter for the local authority. However, given the nature and framing of the application, it is appropriate that the Board have regard to the planning history on the site. The configuration of the appeal site boundary which omits the established shed /workshop and the applicant's dwelling house is questioned by the third party appellant on the basis that the application is made as a parking area for vehicles associated for the permitted use under 11/394. I have reviewed the details of the governing permission 11/394 and note that application details submitted during the course of that application indicated that the proposed shed was strictly only for the storage and maintenance of the applicant's own vehicles and equipment associated with the applicant's drain cleaning and jetting business. The further information details also stated that there is only the applicant and his family on site and no employees. Thus the permitted development envisaged a development of a limited nature. The evidence provided on the appeal file clearly indicates that the nature of the business has intensified and the first party has failed to acknowledge this. Whilst clearly the expansion of the business is to be supported in principle and a certain degree of flexibility in terms of the operation would be assumed in terms of the governing planning permission, this has to be considered in the context of environmental limitations and the capacity of the site to accommodate development of an appropriate scale. Having regard to the proximity of the site to a number of residential properties I consider that the piecemeal approach to regularisation of development on the site and adjacent represents an entirely inappropriate approach in this case.

7.3.3 I consider that the regularisation of development and incorporation within the associated landholding is necessary as, in the absence of same, a grant of permission for retention would facilitate the consolidation and intensification of unauthorised development and would clearly be contrary to the key objective within the Sráid Plan seeking to ensure that development is carried out in a properly planned and coherent manner. Further detail is required with regard to the nature of

the operation on the site, capacity of site services (e.g. wastewater treatment system.) to enable the assessment of the proposal in the context of proper planning and development. On this basis of the foregoing I consider that the Board is precluded from considering a grant of permission in the current circumstances.

#### **7.4 Traffic Impact and Impact on Residential and Rural Amenity.**

7.4.1 The road fronting the site has some capacity to accommodate traffic however given the uncertainty with regard to the overall operations on site and adjacent further information is required to enable assessment of the traffic issue. The question of legal ownership of the setback area in front of the appellant's dwelling is a legal issue. As regards visual impact the site is locally inconspicuous screening has been established on site boundaries however the provision of the proposed entrance would significantly increase the visual impact arising. I note that third Party concerns in relation to noise, traffic and other disturbance. Having regard to the unsatisfactory and piecemeal nature of the application the detailed matters required in terms of the nature and scale of the operation to enable assessment of the impact on established residential have not been provided.

#### **7.5 Other Matters.**

7.5.1 As regards the issue of Appropriate Assessment, having regard to the nature and scale of the development proposed for retention and proposed development, and distance to the nearest Natura 2000 site Appropriate Assessment under the Habitats Directive (92\43\EEC) does not 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.

### **8.0 RECOMMENDATION**

8.1 Having read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising, I recommend that permission be refused for the following reasons and considerations.

## **REASONS AND CONSIDERATIONS**

1. On the basis of the submissions made in connection with the planning application and the appeal and having regard to the nature of the development proposed for retention and proposed development, planning history of the lands in the vicinity of the site, the location of the site adjacent to an established commercial operation, and to the restricted nature of the appeal site boundary it is considered that the details lodged with the application are inadequate. Accordingly, the Board is precluded from considering a grant of a permission as the proposal would facilitate the consolidation and intensification of piecemeal unauthorised development in such circumstances.

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Bríd Maxwell

Planning Inspector

17<sup>th</sup> August 2017