



An
Bord
Pleanála

Inspector's Report ABP-300124-17

Development	Retention of planning permission for a existing freestanding steel shed for document storage.
Location	Rear of 416-420 Clonard Road, Kimmage, Dublin 12.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3651/17.
Applicants	John and Declan Dunning.
Type of Application	Retention of Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Refusal.
Appellants	John and Declan Dunning.
Observers	None.
Date of Site Inspection	30/01/2018
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority's Decision	4
4.1. Documentation Submitted	4
4.2. Planning Authority's Assessment	5
5.0 Planning History	6
6.0 Grounds of Appeal	6
7.0 Appeal Responses	7
8.0 Development Plan Provision	7
9.0 Planning Assessment	8
10.0 Appropriate Assessment	10
11.0 Decision	10
12.0 Reasons and Considerations	11
13.0 Conditions	11

1.0 Introduction

ABP-300124-17 relates to a first party appeal against the decision of Dublin City Council to refuse retention of planning permission for an existing freestanding steel shed to be used for document storage to the rear of No. 416-420 Clonard Road, Kimmage, Dublin 12. Permission was refused for a single reason that the storage in this instance was not incidental to the residential zoning objective for the site and is a non-permissible use in principle. The proposed development would therefore create an undesirable precedent and would be injurious to the residential amenities of the area.

2.0 Site Location and Description

- 2.1. The subject site is located on the Clonard Road, a primarily residential road, dating from the interwar period which runs in a north-west/south-east direction and links up with the Lower Kimmage Road to the south. The subject site is located midway along the southern side of the Road and is located to the rear of the back gardens of three dwellings which face directly onto the south-western side of the road. The shed is situated between the boundary walls of the rear gardens of no.'s 416-420 Clonard Road and the KCR Industrial Estate on contiguous lands to the south-west. A laneway also runs behind the rear garden of the dwellings to the immediate north-west and this provides access to the shed.
- 2.2. The footprint of the shed occupies approximately 50% of the former rear gardens of Nos. 418 and 420 Clonard Road. It appears that the rear portion of these gardens have been separated from the curtilage of the dwellinghouses in order to accommodate the subject site and shed.
- 2.3. The shed itself faces north-westwards and is accessed via the laneway that runs to the rear of the dwellings to the north-west (Nos. 408 and 416). The shed incorporates a shallow pitched roof and rises to a ridge height of just under 4 metres. It comprises of green metal cladding with a series of rooflights in the roof pitch. The shed is 11.9 metres in length and 8.08 metres in width. The total gross floor area of the shed is 96.15 square metres. The main entrance to the shed via a roller shutter

door located on the north-west elevation facing towards the access lane. A small yard area is located to the front of the shed which is just less than 3.4 metres in length. The walls of the shed are located less than a metre from boundary walls with the exception of the front elevation which fronts onto the yard area. The shed is currently vacant (see photographs attached).

3.0 Proposed Development

Planning permission is sought for the retention of the above structure. The intended use of is for the storage of files and documents associated with a motor repair garage located in the vicinity at no.'s 406 and 408 Clonard Road.

4.0 Planning Authority's Decision

Dublin City Council refused planning permission for a single reason which is as follows:

The proposed development, the retention of a shed for the purposes of office document storage/commercial storage, where such storage is not incidental to the operation of the houses referred to in the public notices, is a non-permissible use in principle under zoning objective Z1 "to protect, provide and improve residential amenities". Therefore, the proposed development contravenes the zoning objective and in itself and by the precedent a decision to grant permission would set for the authorisation of non-permissible uses, would be seriously injurious to the residential amenity and the proper planning and sustainable development of the area.

4.1. Documentation Submitted

- 4.1.1. The application was submitted on the 15th August, 2017. It was accompanied by a planning application form, drawings, planning fee etc. and a covering letter on behalf of the applicant by Eamon Weber, Architect and Planning Consultant.
- 4.1.2. The covering letter states that the applicants are the owners of the small yard to the rear of Nos. 416 to 420 Clonard Road. They are also the owners of Nos. 406 and 408 Clonard Road both of which are let to Dunning Motors, General Motor Repairs and DOE Motor Testing of Commercial Vehicles. The motor repairs garage is now

being put up for sale. The applicants erected the steel shed with the sole purposes of providing storage for documents and records associated with the DOE Motor testing which took place at the garage. These documents must be retained for a period of 7 years in accordance with the law. The documents include general invoices, accounts and documents relating to the motor testing of commercial vehicles. The shed is empty at present and not in use. When the motor repair buildings are sold the applicants will move the documentation to the steel shed. It is stated that there will be no trading carried out from the shed.

4.2. Planning Authority's Assessment

- 4.2.1. A report from the Drainage Division state that there is no objection subject to the developer complying with standard conditions.
- 4.2.2. The planner's report notes that the storage of documents is not an ancillary function to the operation of a dwelling. Commercial storage is not a permissible use under zoning objective Z1. The planner's report notes that the rear/side areas of both Nos. 406 and 408 Clonard Road are currently operating as a car repair garage. There does not appear to be any planning permission for the operation of these commercial premises but they would however appear to have been in situ for a number of years.
- 4.2.3. The planner notes that the shed is not of a size and scale that would be significantly detrimental to the residential amenity in terms of overlooking, overshadowing or being of an overbearing nature. However, concerns are expressed that the shed would be used for commercial storage. The report notes that the office document storage may be related to a commercial premises operating at No. 406 and No. 408 Clonard Road. It is further noted that these premises (Nos. 406 and No. 408) are currently up for sale. The provision of a shed for the purposes of commercial storage is not a specific use under the Z1 zoning objective and is therefore considered to be a non-permissible use in principle. It is also stated that the use of the shed for this purpose would create an undesirable precedent. Therefore, it was recommended that planning permission be refused for the retention of the shed for storage purposes for the reasons set out above.

5.0 Planning History

There are no planning history files attached, and the planner's report states that there is no relevant planning permission relating to the subject site. However, under Ref. E0527/17 the Planning Authority issued enforcement proceedings against the presence of a shed on the subject site.

Observers/Prescribed Bodies

There appears to be no observation submitted by either third party observers or prescribed bodies in respect of the current application for retention.

6.0 Grounds of Appeal

- 6.1. The decision of Dublin City Council to issue notification to refuse planning permission was appealed on behalf of the applicants by Eamon Webber, Architect and Planning Consultant.
- 6.2. It is stated that both the applicants are directors of Dunning Motors Limited which have been operating as a commercial garage since 1982 on Clonard Road and they are approved and contracted Department of the Environment testers for commercial vehicles.
- 6.3. The yard which contains the steel shed is owned privately by the applicants and has been used for the storage of motor vehicles since the applicants acquired it in 1993. The applicants now wish to retire and Dunning Motors Limited is currently up for sale. Voluntary liquidation will follow from the sale. Due to legal requirements, all documents must be retained for a minimum of 7 years. This is also a requirement of the Revenue Commissioners. The shed was erected for the storage of documents relating to the motor business. Both owners of Dunning Motors live in a standard three-bedroom house which cannot accommodate all the paperwork which will result from the liquidation of the motor business. It is reiterated that the applicants have a legal obligation to retain this paperwork.
- 6.4. There will be no business or trading carried out from the shed. It will be a simple lock-up which will be visited occasionally by one or both of the brothers. It will not generate any traffic, noise pollution or otherwise.

- 6.5. It is noted that the Local Authority planner acknowledged that the shed in question will not give rise to any adverse impact on residential amenity. While the shed is in an area zoned Z1, it is located on the fringe of a Z6 zone which allows for commercial use. It is noted that the lane serving the site is also zoned Z6. Details of the various commercial uses which operated historically in and around the site are set out. It is noted that other premises in the immediate vicinity also accommodated commercial uses including a grocery and newsagent, a knitting factory, a motor bike repair business and an egg wholesaler. Letters of support of the application for retention from residents in the vicinity are also attached. These letters also attest to the established commercial use which operated along the rear lane historically.
- 6.6. The local authority planner's report which suggest that there is no extant permission for commercial developments at Nos. 406 and 408 Clonard Road is incorrect. There is full planning permission for the operation of the commercial enterprise at both 406 and 408 Clonard Road. The Board are also requested to note that there are no objections from local residents to the current planning application.
- 6.7. In conclusion it is stated that because of its limited and occasional use the shed in question would not be injurious to the residential amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

7.0 Appeal Responses

It appears that Dublin City Council have not submitted a response to the grounds of appeal.

8.0 Development Plan Provision

- 8.1. The subject site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The site is located in an area governed by the zoning objective Z1 "*to protect, provide and improve residential amenities*". The vision for residential development in the city is one where a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and commercial and community facilities.

- 8.2. Permissible uses include buildings for health, safety and welfare of the public, community facilities, cultural recreational buildings, enterprise centre, homebased economic activity, medical and related consultants, shop (local) or training centre.
- 8.3. Uses that are open for consideration include B&B, betting office, car park, hostel/hotel, light industry, live/work units, media associated uses, petrol station, public house, restaurant or veterinary surgery.
- 8.4. In relation to non-conforming uses, it is stated that throughout Dublin City there are uses that do not conform with the zoning objective for the area. Also such uses where legally established or where in existence for longer than 7 years shall not be the subject of proceedings under the Planning and Development Act, 2000 (as amended) in respect of the continued use. When extensions or improvements of premises accommodating such uses are proposed each shall be considered on their merits and permission may be granted where the proposed development does not affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.

9.0 Planning Assessment

- 9.1. Planning permission was refused by Dublin City Council for a single reason on the grounds that the retention of the shed for the purposes of office/document storage/commercial storage was not incidental to the operation of a house and that the proposed development therefore is not a permissible use under the Z1 land use zoning objective and as such, would set an undesirable precedent for similar type developments in the area.
- 9.2. I consider that a clear distinction needs to be drawn in respect of the use of the shed. My site inspection confirmed that the shed is not currently in use. Under the proposal it appears that the shed is to be used for storage purposes only. The use proposed in this instance is not dissimilar to the casual use of most sheds associated with domestic dwellings. While the use of the shed is for the storing of records, files and documents associated with a commercial trade in the vicinity, the actual land use activity to be undertaken at the shed is that of a repository or store as opposed to a use where a commercial enterprise is being undertaken. The shed in question is to accommodate files and documents associated with a motor repair garage and

perhaps more importantly, paperwork associated with a DOE testing centre for commercial vehicles, which according to the applicant, there is a requirement to maintain all such records for a period of 7 years.

- 9.3. Having regard to the description of the use set out in the grounds of appeal, in material land use terms, there is a negligible difference between using the shed in question for the storage of paperwork (albeit commercial paperwork) and for typical domestic items associated with a domestic dwelling. The shed will not be used as a commercial storage enterprise where customers would be permitted to have items/containers stored at the facility upon payment of a fee. It appears that documents will be stored within the shed on a once-off basis until such time as they are no longer needed. In this regard the shed will only be visited occasionally and according to the grounds of appeal, only by the said owners of the shed in question. The shed will not therefore attract any traffic nor will it involve any loading or unloading of items in and out of the shed on a regular/daily basis as part of a commercial enterprise. As such, it will not give rise to any disturbance that would normally be associated with a commercial storage type facility. The potential to impact on residential amenity therefore is greatly minimised.
- 9.4. Furthermore, while the shed is located in a residentially zoned area, it is also located contiguous to an industrial estate and in close proximity to other commercial type enterprises on the Clonard Road. Therefore, it cannot be reasonably argued that the shed is located in an area which is exclusively residential and quite in nature whereby the location of a shed for storage purposes could potentially have a greater impact on adjoining residential amenity.
- 9.5. I note that the Z1 zoning objective set out in the Dublin City Development Plan does allow for certain uses of a commercial nature. These include local shop, training centre, medical practitioners etc. all of which are commercial in nature. In this light, the use of a shed for the storage of commercial documents should not be seen as detrimental to the amenities of the area or an outlier in land use terms having regard to the permitted uses under the zoning objective. For these reasons I do not consider that the retention of the shed for the purposes proposed would in any way set an undesirable precedent for similar type activities. It is noted that the Local Authority planner acknowledged that the shed in question will not give rise to any adverse impact on residential amenity in term of overlooking, overshadowing or being

overbearing in nature. I would agree with this conclusion. But I would further conclude that the use of the building on a one-off basis for the storage of commercial type documents would not give rise to any residential amenity issues in terms of noise, traffic or general disturbances. As such, I do not consider that the proposed development is incompatible with the Z1 land use zoning objective of the area and therefore I consider that the Board should overturn the decision of the Planning Authority and grant retention of planning permission for the use of the shed for the storage of the said documentation. The exact use of the shed for storage can be restricted by way of condition.

- 9.6. Finally, I note that the decision of the planning authority in its wording for refusal did not specifically refer to the “proposal materially contravening the development plan”. Therefore, the criteria set out under Section 37(2)(b) to overturn the decision of the Planning Authority in this instance would not apply.

10.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European site, 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 and projects on a European site.

11.0 Decision

Grant planning permission for the proposed development based on the reasons and considerations set out below.

12.0 Reasons and Considerations

It is considered that the retention of the shed for the storage of commercial documents subject to conditions set out below would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would generally 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.

13.0 Conditions

1. The development for which retention of planning permission is being sought shall be retained in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. 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 the 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. Details of all external finishes associated with the shed for which retention of planning permission is sought shall be agreed in writing with the planning authority prior to the commencement of development.

Reason:

3. Water supply and drainage arrangements, including the [attenuation and] disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. The shed shall be used for the retention of commercial documents associated with the motor business at Nos. 406 and 408 Clonard Road. It shall not be used for the storage of commercial documentation associated with any other business and shall not operate as a storage repository on any other commercial basis other than that associated with the said motor business.

Reason: In order to protect the residential amenities of the area.

5. The use of the structure for the storage of commercial records and documentation shall cease after a period of seven years from the date of this order unless a further grant of planning permission has been sought and granted prior to this date.

Reason: In the interest of orderly development.

Paul Caprani,
Senior Planning Inspector.

12th February, 2018.