



An  
Bord  
Pleanála

## Inspector's Report ABP-301014-18

### Development

Retention planning permission for single storey domestic store at rear of residence and permission to erect a boundary wall to enclose area of land north of residence.

### Location

10 Abbey Lock, Corbally, Limerick

### Planning Authority

Limerick City and County Council

### Planning Authority Reg. Ref.

17/523.

### Applicant(s)

Denise and Noel Sheehy.

### Type of Application

Retention Permission

### Planning Authority Decision

Refuse Retention.

### Type of Appeal

First Party

### Appellant(s)

Denise and Noel Sheehy

### Observer(s)

1. Sean and Susan Willis.
2. Liam & Caroline Farrell
3. Thomas Conneely

### Date of Site Inspection

14<sup>th</sup> June 2017

### Inspector

Fiona Fair.

## 1.0 Site Location and Description

- 1.1. The appeal site (of stated 250 sq. m) No. 10 Abbey Lock, Corbally, Limerick is located on the north-eastern side of the city centre. The area is defined by the Abbey and Shannon Rivers to its north, east and west and by the Dublin road to the south. The River Shannon and Park Canal is located to the south of the appeal site. The area is predominantly semidetached residential houses.
- 1.2. The appeal site is a corner site facing east. It hosts a semi-detached part pebble dash part red brick faced dwelling, with single storey annex to its northern side. The northern elevation and side boundary wall abut a small area of public open space. The appeal site is separated from the open space area by a c. 1.1 – 1.8 m high block, capped and dashed wall. The front of the site is enclosed by way of a low block wall comprising a small area of garden space and a driveway. A public footpath wraps its way around the public open space area. There were cars parked partially on the open space area / footpath at the time of my site visit.
- 1.3. The site backs onto the northern gable of No 11 Abbey Lock which is located at a lower level to the subject appeal site. The front building line of No. 11 Abbey Lock is back in line with the boundary wall of No. 10 (the subject appeal site).
- 1.4. The garage to be retained in-situ in the rear garden was in use for storage of scooters / mopeds (3 number on the day of my site visit) a ladder and a lawnmower. Two small dogs were also evident roaming free in the rear yard / garage area.

## 2.0 Proposed Development

- 2.1. The proposal comprises:
  - Retain single storey domestic store as constructed at the rear of dwelling house. (GFA stated as 20 sq. m)
  - Erect a boundary wall to enclose rear of land north of their residence now used as open space, to incorporate part of the area into their site to prevent young people congregating and causing nuisance.

## 3.0 Planning Authority Decision

### 3.1. Decision

Following a request for further information with respect to:

1. Omission for the inclusion of public open space within the application site.
2. Revised proposals for the finish and colour of the shed and photographic survey of the rear yard and store.

Permission was refused for the following reasons, summarised:

1. It is considered, having regard to the fact that proposed development would lead to the loss of public open space associated with the Abbey Lock Estate, that the proposed development would therefore be seriously detrimental to the amenities of existing and future residents of the estate and set an undesirable precedent.
2. It is considered that the shed, by reason of its location, to the rear of the dwelling in close proximity to the side of an existing dwelling and its industrial appearance, would be out of character with the existing pattern of development in the vicinity and would set an undesirable precedent. Injurious to visual amenities of the area.

### 3.2. Planning Authority Reports

#### 1. Planning Reports

The Planners Report recommends a refusal of permission for the reasons set out above.

#### 2. Other Technical Reports:

None.

### 3.3. Prescribed Bodies

None

### 3.4. **Third Party Observations**

Three number objections were received by the planning authority. Issues raised are summarised as follows:

- Loss of public open space
- Negative precedent
- Overbearing nature of the shed
- Incorrect public notices, proposal is for retention of the shed element only, permission should be sought to erect the proposed wall.
- Negative impact upon residential amenity
- Concern with regard to the use of the shed. It may be used to facilitate a business for motorcycle / engine repairs.
- Loss of sun light to No. 11 Abbey Lock
- Location of proposed wall could lead to traffic safety hazard.
- Concern with respect to Fire safety
- Local residents actively maintain the green area and have not witnessed the alleged problem of nuisance.

## 4.0 **Planning History**

### 4.1. **DC-177-16** Extension / Shed- Enforcement Notice - Current

## 5.0 **Policy Context**

### 1. **Development Plan**

The site is located within the city boundary for Limerick, as determined by the Limerick City Development Plan 2010 – 2016.

The appeal site is located on lands zoned 2A Residential, as per Land-use Zoning Map 1.

Zoning Objective ZO.6 Open Space & Recreation  
And Objective ZO.6 (A) Public Open Space

## 5.2. Natural Heritage Designations

None Relevant.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party appeal is summarised as follows:

#### The Shed

- The height of the shed is only 2.650m
- The shed height matches the height of the existing store
- The shed is completely within the curtilage of the applicant site.
- The use of the shed is solely for domestic purposes
- The shed is used to dry clothes, to store garden furniture and provide shelter for 2 small dogs
- A condition restricting the use of the shed to domestic purposes is welcomed and would be adhered to.
- Devaluation is not valid grounds for an objection
- The fact the shed is on the eastern side of No. 11 Abbey Lock means it will have no effect on sunlight.
- Fireproofing is not relevant in a domestic planning application.
- There are no valid points raised in the objection to the shed. If the applicants decided to knock their existing store which adjoins the shed to be retained, the shed, which is less than 20 sq. m would not need planning permission
- The planners report states that the shed and store is 36 sq. m. However, it is in fact 32 sq. m. Less than the 40-sq. m allowed for exempt residential extension.
- People can paint their property any colour they choose without planning permission,

- The materials used are ideal for a shed. Refusing permission on grounds of material type used and colour is unwarranted.

#### The boundary Wall

- There are 3 objections to the erection of a boundary wall to enclose the public open space area and there are 5 letters of support.
- There are two larger areas of public open space, to the south, of the estate for children to play on.
- The area is the subject of anti-social behaviour (guards have been call numerous times), incorporating it into the side and rear garden of the applicants property would resolve the issue.
- The estate was designed as an open plan development but the vast majority of houses have enclosed the front lawn and driveway.
- The area which is the subject of this application appeared as a lawn attached to the applicant's property.
- This area of land was maintained by the residents of Abbey Lock incl. Noel Sheehy, but since 2012 Limerick City Council cut the grass regularly.
- Precedent has been established for the granting of this type of development in the local area. At 1 Abbey Lock – change of use of public open space to private car parking. At 85 Hilltop former open space incorporated into the site. At 51 Hilltop permission was granted to retain a wall and gates at the side of the house.
- The Council have failed to prove that the land in question is open space and not part of the applicants site as is the case in the adjoining case.
- Appeal Accompanied with:
  - Five Letters of support from local residents
  - Notification of decision to refuse planning permission
  - Copy of F.I required
  - Copy of F.I. submitted
  - Copy of planner's report

- Map showing housing estate and open space areas.
- Letter from Denise and Noel Sheehy dated 23.02.2018 in support of their application.

## 6.2. Planning Authority Response

No response received

## 6.3. Observation

The issues raised in the three Observations are summarised as follows:

### Boundary Wall

- The open space area is not within the ownership of the applicant.
- No agreement with neighbours to take over an area of public open space within the estate and or to construct a boundary wall.
- Development at No. 1 Abbey Lock did not include the erection of any structure / a boundary wall or interfere with sightlines.
- The proposed development, a large block boundary wall at the path edge, which is at a 90-degree turn on the road as you enter the back of the estate is large and intrusive.
- There are always a number of cars parked at the roadside in the evenings. The proposal represents a traffic and pedestrian risk, esp. to children.
- Suggest that the real reason to take over the green space is to gain access to the shed, as the passageway to the side of the house is too narrow to accommodate a motorbike or other vehicle.
- Anti-social behaviour on the green space is disputed by neighbours.
- Of the five houses listed which approve of this development, three of them are properties which border a green area (No.'s 7, 45, and 50). It should be considered they would like to see a precedent set to allow them to expand into the public area.

- The high wall between no. 10 and the green area was constructed at the same time as the house, marking the boundary.
- The drawings submitted with the application are inaccurate, additional pillars are shown on the side boundary wall, the distance between the rear of the dwelling and the shed / garage appears greater.

#### Shed

- Concern that the shed is to be used to facilitate a business
- The proposal if granted would set a negative precedent and represent poor planning.
- Negative impact upon the visual amenity of the surrounding area.
- The sheer size of the shed is not in keeping with a residential area.
- Shed blocks light to the side window of No. 11 Abbey Lock.
- Fire safety concerns
- Past failure to abide with planning laws. To date the applicant has shown disregard for the planning process, no reason to believe that conditions attached to a planning permission, with respect to use, would be adhered to.
- Concern with regard to surface water drainage.
- Parking is very limited in the area the possible use of such a large shed for commercial activity would exacerbate parking problems and traffic hazard.



## 7.0 Assessment

I consider the key issues in determining this appeal are as follows:

- **The Shed**
- **The Wall**
- **Other Matters**
- **Appropriate Assessment**

### 7.1. The Shed

The first reason for refusal by the planning authority (draft decision) considered that the shed, 'by reason of its location, to the rear of the dwelling in close proximity to the side of an existing dwelling and its industrial appearance, would be out of character with the existing pattern of development in the vicinity and would set an undesirable precedent'.

There is a 'store' and a 'shed' (the subject of the retention application) in the rear garden of the applicants semi-detached property. The 'Store' has a measured net floor area of some (3.2m x 4) 12.8 sq. m. The shed has a stated and measured net floor area of (4m x 5 m) 20 sq. m. The height of the 'shed' to be retained matches the height of the 'existing store' with a maximum ridge height of stated 2.650 m. The shed slopes east towards the host dwelling. It is finished with a dark grey galvanised steel finish with galvanised roof. The 'store' while of block construction also has a galvanised roof finish. The two structures run the width of the garden and are located 0.4m from the western / rear party boundary with number 11 Abbey Lock.

The first party refers numerous times to the exemptions set out under Class 3, Part 1 of Schedule 2 of the Planning and Development Act 2000, as amended. It is argued that the exempted development rights in relation to sheds within the curtilage of a house is relevant to their case for retention of the shed. I note that Class 3 states:

'The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar

structure', would be exempted development subject to the following limitations and conditions:

1. 'No such structure shall be constructed, erected or placed forward of the front wall of a house'.
2. 'The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres'.
3. 'The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres'.
4. **'The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house'**.
5. 'The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres'.
6. 'The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such'.

The combined net floor area of the 'store' and 'shed' is some 32.8 sq. m which clearly exceeds the 25 sq. m limit for an exempt store / shed. The external finishes of the structure clearly do not conform with those of the house. I therefore see no merit to the first party's argument that the 'shed' the subject of the retention permission would be exempt development if the 'store' were to be demolished / removed.

Clearly the industrial design and materials used are of relevance in the determination of the planning application. The subject shed is located within the restricted rear garden of a semidetached dwelling, right up against the party boundary with a neighbouring dwelling (no. 11 Abbey Lock). There is a change in the ground level between the two properties, therefore, while the shed has a height of only 2.65m,

measured from ground level within the appeal site. It has a height of some 3m above the ground level of No. 11 Abbey Lock. No. 11 Abbey Lock has a ground floor window on its gable elevation.

Having carried out a site visit, I am of the opinion that the shed does not respect the character of the area and would be injurious to visual amenities of the area. It is overbearing when viewed from the street and from the front, side and rear of No. 11 Abbey Lock. It does overshadow the ground floor window of the adjoining dwelling (no. 11) and its finish clearly does not conform with those of the house (block and tile). The shed if granted retention planning permission would set a negative precedent.

The first party's response to further information is noted and while the sheeting used in the walls and roof may be of high specification and used by leading Irish manufacturers of garages and garden sheds, I would be of the opinion, that this may be the case / may be considered more appropriate in much larger sites or in a rural setting. The shed in the subject case instance is located within an extremely confined site, within an established residential area. The rear garden depth is only 8.5m. The shed is constructed right up to the northern boundary and within 0.4m of the western party boundary.

I note the concerns of the observers with respect to use of the shed for commercial purposes. While I witnessed the storage of 3 mopeds / scooters within the shed there was no evidence that the shed was being operated as a commercial garage or indeed as a workshop. Should the Board disagree that permission should be refused and decide to grant planning permission I recommend that a condition be attached restricting the use of the garage for purposes incidental to the enjoyment of the dwelling house, only.

## **7.2. The Wall**

Permission is also sought to erect a boundary wall to enclose land north of the residence, now used as public open space, into the side and rear garden of the applicant's property. It is submitted that there is a precedent for incorporation of public open space into private gardens and for change of use of open space to use as private car parking within the estate. It is also argued that the area is the subject

of anti-social behaviour and that the development would prevent young people congregating and causing nuisance.

Observers to the appeal refute this argument and submit that the reason for taking over the public open space is to provide a side access to the rear garden and shed the subject of the retention application. Concern is raised with regard to future use of the shed for commercial purposes.

The second reason of refusal by the planning authority considered 'having regard to the fact that proposed development would lead to the loss of public open space associated with the Abbey Lock Estate, that the proposed development would therefore be seriously detrimental to the amenities of existing and future residents of the estate and set an undesirable precedent'.

The observers are deeply concerned with respect to loss of public open space and the blocking of sightlines which they claim would ensue should a boundary wall be constructed as proposed.

I see no merit to the first party's argument that the Council have failed to prove that the land in question is open space and not part of the applicants site. The appeal site is clearly delineated on plans and drawings submitted. The area to the north of the applicants site outside of their boundary wall is visibly set out as public open space and is undisputedly maintained by the Council. There is evidence on file that this space is used by residents as public open space. I witnessed no evidence of anti-social behaviour or litter on the open space which was well maintained at the time of my site visit. The area is both visually and functionally accessible, adequately overlooked and supervised.

The Limerick City Development Plan 2010 – 2016 is of relevance. Zoning Objective ZO.6 Open Space & Recreation states the following in respect of Open Space within Limerick City:

'To protect, retain and provide for open space both natural and semi natural and recreation uses throughout the City. With a presumption against developing land zoned public open space areas for alternative purposes, **including public open space within housing estates.**

Objective ZO.6 (A) Public Open Space states:

‘To retain all land dedicated for public open space’.

A grant of planning permission in this instance would set an undesirable precedent. It would tacitly imply that it is acceptable to encroach upon or take into private ownership areas of open space and that it is not imperative that written objectives or conditions of permission need to be complied with.

In fact, in the case of the current application and appeal before the Board, one could go further and suggest that the public open space lands could be of a financial benefit to the applicant if the development were permitted and the applicant was to sell on the land earmarked for open space for future development and financial gain.

### **7.3. Other Matters**

The matter of fire risk has been raised by the observers to the party.

Fire safety and compliance with building regulations is governed separately under the Building Control Regulations, 1997, S.I. No. 496 of 1997.

### **7.4. Appropriate Assessment**

Having regard to the nature and scale of the proposed development, to the infrastructure in place, nature of the receiving environment and 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 or projects on a European site.

## **8.0 Recommendation**

8.1. I recommend that retention planning permission for the ‘shed’ and planning permission for the ‘boundary wall’ should be Refused for the following reasons.

## 9.0 Reasons and Considerations

1. Having regard to the pattern of development in the area and the scale of the 'shed' proposed to be retained, it is considered that the 'shed', by reason of its scale, form and design and proximity to site boundaries, would seriously injure the residential amenities and depreciate the value of adjoining properties by reason of visual obtrusion, overbearing and overshadowing. The development would, therefore, seriously injure the amenities of the area and of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed erection of a boundary wall to enclose lands currently used as public open space to form part of a private side and rear garden would set an undesirable precedent in terms of non-compliance with planning conditions of the original permission for the estate would be contrary to Zoning Objective ZO.6 and ZO.6 (A) open space and amenity policy of the Limerick City Development Plan 2010 – 2016 and would therefore be contrary to the proper planning and sustainable development of the area.

---

Fiona Fair  
Planning Inspector

20.06.2018