



An
Bord
Pleanála

Inspector's Report 301452-18

Development	The construction of a shed/fuel store and associated site works.
Location	Killina, Rahan, County Offaly.
Planning Authority	Offaly County Council.
Planning Authority Reg. Ref.	2/17/450.
Applicants	Brendan and Sandra Kearney.
Type of Application	Permission.
Planning Authority Decision	Permission with conditions.
Type of Appeal	Third Party
Appellant	Nellie Hughes.
Observer(s)	None.
Date of Site Inspection	3 rd July 2018.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area approximately a kilometre east of Killina Church, three kilometres north east of Mucklagh and six kilometres northwest of Tullamore in Offaly.
- 1.2. The appeal site is a field which has frontage onto the local road which is a cul de sac road off another off a local road connecting Mucklagh and Rahan. In the immediate vicinity of the site there are a number of dwellings including to the west and east of the site in which it proposed to locate the development. There is a field gate and roadway located immediately to the west of the dwelling located to the east and there is an access road leading into the field.
- 1.3. Drawings would indicate that the landholding in addition to the field on which the shed is proposed also indicates a strip of land to the rear of the dwelling to the east.
- 1.4. The site is level and has a stated area of 0.42 hectares.

2.0 Proposed Development

- 2.1. The proposal as submitted to the planning authority on the 15th of November 2017 was for the construction of a fuel shed located in the rear (south) of the field.
- 2.2. The shed is singled storied 12.7 metres by 6.7 metres. it is singled storied with a pitch roof and a double leaf cavity concrete walls. The elevations provide for a garage type door to the front elevation a single door on the rear elevation and windows on the front and rear elevations and one of the side elevations.
- 2.3. Further information was submitted on the 2nd of March 2018 indicating that the applicant does not have sufficient land at his residence for a storage shed. The shed is to store fuel and vintage cars and tractors and no commercial activity will be carried out.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to grant planning permission for the development subject to 8 conditions.

Condition no 5 limits the use of the building.

3.2. Planning Authority Reports

3.2.1. Planning Report

The planning report dated the 9th of January 2018 refers to:

- Submissions received;
- An appraisal of the development indicating the site is in a pressure area;
- The need for clarity in relation to the exact nature of the development.
- Further information is recommended.

A subsequent planning report dated the 22nd of March 2018 refers to the further information as submitted. Permission was recommended.

3.3. Other submissions.

A third party submission was received, which refers to issues of landownership and removal of trees on her property.

4.0 Planning History

4.1. There is no planning history.

5.0 The Appeal

5.1. Grounds of Appeal

The appellant c/o Keyes Consultant Engineers in a submission dated the 18th of April 2018 refers to:

- The appellant refers to the issue of the boundary between the appellants' lands and the lands of the applicant and that the boundary is a matter of dispute which has not been resolved planning history of the site.
- The existing driveway, existing entrance and are within the area which is part of this dispute in relation to ownership and planning permission cannot be granted where there is such a dispute in relation to ownership.

5.2. **Response to the Grounds of appeal**

5.3. **Planning Authority Response.**

- 5.3.1. The planning authority in a response dated the 17th of May 2018 indicate that there are no observations in relation to the appeal.

5.4. **Applicant Response**

- 5.4.1. The applicant c/o EDK Design in a response dated the 14th of May 2018 refers to;
- The applicant has submitted a number of maps relating to property registration and the various registrations of land over time.
 - The shed is contained within the property registered to the applicants.

6.0 **Assessment**

- 6.1. Having regard to the submissions received and the documentation submitted the primary issue in relation to this appeal relates to legal matters. The dispute relates to a strip of land containing the access road and entrance leading from the public road to the shed. The lands on which the proposed shed is to be constructed would not appear to be a matter of dispute.
- 6.2. I do not propose to address many of the issues raised and I would in this regard refer to section 5.13 of the department guidance on development management which refers to issues relating to title to land where it is indicated that *“the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development. Where*

appropriate, an advisory note to this effect should be added at the end of the planning decision”.

- 6.3. The parties have submitted maps relating to land registration relating to the disputed strip of land forming the access road and entrance from the road to the proposed shed.
- 6.4. In relation to making a planning application there is nothing definitively to cast doubt on the bona fides of any assertion by the applicant to make a planning application or that the applicant does not have sufficient legal interest or that the Board may if satisfied with matters relating to proper planning and development decide to grant permission. However, such a grant of permission would be subject to the provisions of section 34(13) of the Act, referred to above and would not negate any party rights in relation to civil law.
- 6.5. In the event I would note that disputed lands are not in the ownership of the applicants there are alternative lands available to provide access to the shed.
- 6.6. Specifically, in relation to the matters applied for in this application / appeal, the construction of a shed for storage of fuel and vintage cars/tractors I would have no objection in principle to the development as proposed. Given the nature of the design and finishes of the structure I would agree with the inclusion of a condition limiting the use of the structure.

7.0 Recommendation

- 7.1. In view of the above assessment permission for the proposed development is recommended. An advisory note stating the provisions of section 34(13) of the Planning Act should be added at the end of a decision to grant permission.

8.0 Reasons and Considerations

Having regard to the nature of the development and the proposal as submitted, it is considered that the development, would not be contrary to the proper planning sustainable development or injurious to the visual amenities of properties of the area.

9.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 15th of November 2017 and the 2nd of March 2018, 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 interests of clarity

2. The roof colour of the proposed houses shall be blue-black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

3. The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity

4. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

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- 5 The shed shall be limited in use to the uses as outlined in the details submitted to the planning authority in the letter dated the 2nd of March 2018. The shed shall not be used for overnight accommodation or for any industrial or commercial purposes.

Reason: In the interest of orderly development and to limit the use of the proposed shed to the purposes outlined in the submitted documentation.

Derek Daly
Planning Inspector

17th July 2018