



An
Bord
Pleanála

Inspector's Report ABP-304057-19

Development	Garden shed and associated site works
Location	Cois Abhainn, Lower Dripsey, Agharinagh, Dripsey, County Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	18/05943
Applicant(s)	Barry C. Galvin & Son Solicitors
Type of Application	Retention Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Barry C. Galvin & Son Solicitors
Observer(s)	None
Date of Site Inspection	17 th June, 2019
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The site of the proposed development is located in Dripsey approximately 16km to the west of Cork City. It is located immediately north of the Dripsey River and to the south of Regional Road No. R618. The site lies below the level of this adjoining public road. It comprises an elongated narrow plot on which there is a large detached two-storey house on its east side. There are also associated gardens and a number of outbuildings. The overall development on the site is served by a single vehicular access onto the regional road which is located immediately east of an existing garage. The existing shed the subject of the appeal lies to the west of the garage and adjoins the road frontage. It comprises a single storey structure constructed in green metal sheeting that is used as a garden shed.

2.0 Proposed Development

2.1. The proposed development comprises the retention of the garden shed. The shed has a stated floor area of 76.94 square metres. The overall site is stated to be 1.075 hectares.

3.0 Planning Authority Decision

3.1. Decision

On 4th March, 2019, Cork County Council decided to grant permission for the proposed development subject to 8 conditions.

Condition 3 of the decision was as follows:

3. *Sight distance of 120m to the East and 120m to the West shall be provided from centre point of entrance 3m back from public road edge. No vegetation or structure shall exceed 1m in height within the sight distance triangle.*

Reason: *To provide proper sight distance for emerging traffic in the interests of road safety.*

Condition 8 of the decision was as follows:

8. *The developer shall ensure that the development is served by adequate water and waste water facilities and shall enter into a connection agreement with Irish Water where appropriate.*

Reason: *In the interests of orderly development and public health.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

In the first report, the Planner noted planning history and development plan policy. Reference was made to the Area Engineer's concerns relating to the shed and the nearby existing garage impacting on sightlines at the existing entrance. A request for further information was recommended seeking the Area Engineer's further information request, a revised site layout plan showing the entirety of the site and all structures thereon, as well as the existing waste water treatment system, details of other structures on the site, their planning status, floor plans and elevations of each, and their uses, and confirmation that the development is not for residential use.

Following the receipt of further information, the Planner recommended that clarification be sought on sightlines at the entrance and the layout of the waste water treatment plant.

Following the receipt of clarification, the Planner recommended that permission be granted subject to conditions.

3.2.2. Other Technical Reports

The Area Engineer sought clarity on sightlines and confirmation that the development would not be for residential use.

Following the receipt of clarification, the Area Engineer had no objection to the proposal subject to conditions.

4.0 Planning History

I note the planning history associated with this site as outlined in the Planner's report as follows:

P.A. Ref. 92/2980

Permission was granted for the construction of a new entrance and the retention of a septic tank.

P.A. 02/3402

Permission was granted for a dwelling and sewage treatment plant in 2003.

5.0 Policy and Context

5.1. Cork County Development Plan 2014

The site is located within the Cork Metropolitan Strategic Planning Area

5.2. Appropriate Assessment

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

5.3. EIA Screening

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment. No EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal primarily relates to the attachment of Condition 3 to the planning authority's decision. The grounds of the appeal may be summarised as follows:

- It is impermissible for the Council to seek to revoke or modify existing use rights as is sought by Condition 3. The matter of dealing with the retention of a garden shed has no road traffic implications.
- The condition is ambiguous and should have set out more precisely whatever demolition works compliance might necessarily involve.
- Condition 3 is unenforceable given the lack of 120m of straight road to the east of the entrance.
- The entrance is close to a bad bend and traffic exiting and approaching the bend is necessarily very slow.
- The condition does not comply with Guideline 7.3.3 of the *Development Management Guidelines for Planning Authorities* as it should be a condition capable of being complied with. The Guidelines also state that conditions should be precise, reasonable and should not radically alter the nature of the development. The alterations sought would cause deterioration of the security arrangements at the site.
- The applicant objects to the requirement of Condition 8 seeking an obligation to enter into agreement with Irish Water.

6.2 Planning Authority Response

I have no record of a response to the appeal from the planning authority.

7.0 Assessment

- 7.1. I note that the appeal has raised concerns relating to the attachment of two conditions with the planning authority's decision to grant permission, namely Condition 3 and Condition 8. Having regard to the nature and extent of the proposed development and to these conditions, as well as the range of other conditions that

have been attached with the planning authority's decision, I consider that it is only appropriate to deal with this proposed development *de novo*.

- 7.2. I first note for the Board that the nature and extent of the proposed development is the seeking of permission to retain a garden shed. There is a house, vehicular entrance serving this residential property, and other ancillary structures and services within this site that have served this residential property for many years. This is not an application for the retention of anything other than the garden shed. This garden shed is a store that stores garden-related tools and other objects associated with the established domestic garden.
- 7.3. The garden shed is sited below the public road that lies immediately to the north of this site and it lies behind a stone wall. From the long-established vehicular entrance to this property this garden shed is not visible and, again noting that it is sited behind the roadside boundary wall, it in no way impedes sightlines to the west from the entrance. It is my submission to the Board that the attachment of Condition 3 of the planning authority's decision is completely misplaced and should in no way be attached as a condition with any planning permission associated with this development proposal.
- 7.4. Regarding the attachment of Condition 8 with the planning authority's decision, I note for the Board once again that the proposed development seeking retention is a garden shed. This store is no generator of foul waste nor would it utilise water beyond its function as a garden shed. Why the planning authority would be seeking the developer to enter into a connection agreement with Irish Water is a mystery. The attachment of Condition 8 has no place in any schedule of conditions attached with any grant of permission for the retention of this domestic garden shed.
- 7.5. I note that the planning authority has attached other conditions with its decision to grant permission. Condition 2 prohibits use of the garden shed, as well as an existing glass house and garage, for commercial purposes or human habitation. Applying such a condition to other structures unrelated to the proposed development should not form part of this permission for the retention of the garden shed. Furthermore, the necessity to prohibit the human habitation of a glass house, even if the principle of extending the authority of a permission beyond the garden shed was considered acceptable, is somewhat questionable due to its habitability. Regarding Conditions 4

and 7 of the planning authority's decision relating to vegetation or any structure not exceeding 1m in height within the sight triangle and preserving roadside drainage, I again reference the nature and extent of the proposed development, namely the retention of a garden shed that is sited below road level behind the roadside boundary wall that is in no way related to the long-established vehicular entrance serving the residential property. These conditions are misplaced in any schedule of conditions attached to any grant of permission relating to this proposed development.

- 7.6. In conclusion, I submit that the domestic garden shed has no adverse traffic, landscape, visual, drainage, or other planning or environmental impacts that would raise any concerns. The range of conditions attached with the planning authority's decision are so misplaced that it necessitates this proposal being considered *de novo* so that the attachment of an appropriate schedule of conditions with a grant of permission should follow.

8.0 Recommendation

- 8.1. I recommend that permission is granted subject to the following reasons, considerations and conditions.

9.0 Reasons and Considerations

Having regard to the small scale of the proposed building, its siting to the rear of a roadside boundary wall on lands below the level of the adjoining public road, and its function as a garden shed, it is considered that the proposed development would not endanger public safety by way of traffic hazard, would not generate any significant demand for public waste water or water services, and would otherwise be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The structure shall be used for purposes incidental to the enjoyment of the dwelling on the site and shall not be used for human habitation or for the carrying on of any trade or business.

Reason: In the interest of orderly development.

2. The 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 and to ensure a proper standard of development.

Kevin Moore
Senior Planning Inspector

20th June, 2019