



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305408-19

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<b>Development</b>	Retention of existing Garage/Storage Shed and all associated Site Works
<b>Location</b>	Canal Line Pullagh, Tullamore, Co. Offaly.
<b>Planning Authority</b>	Offaly County Council
<b>Planning Authority Reg. Ref.</b>	18568
<b>Applicant(s)</b>	John and Elizabeth Murphy.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Grant subject to conditions.
<b>Type of Appeal</b>	Third Party v Grant.
<b>Appellant</b>	John Delaney.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	6 <sup>th</sup> March 2020.
<b>Inspector</b>	Susan McHugh

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## **1.0 Site Location and Description**

- 1.1. The appeal site is located on the northern side of Pollagh village, approx. 22km to the west of Tullamore, County Offaly.
- 1.2. It is one of five detached bungalows accessed via Grand Canal Way a tarmac single carriageway/tow path on the southern side of the Grand Canal.
- 1.3. The existing house is served by two gated vehicular entrances and driveways from Grand Canal Way. There are a number of structures on the overall site including a timber shed to the rear, and newly constructed metal clad shed to the side/ east of the house.
- 1.4. The existing garage/storage shed subject of the application is located to the rear of the existing house and along the western boundary with the adjoining residential property which is home to the appellant.
- 1.5. The stated area of the appeal site is 0.32ha.

## **2.0 Proposed Development**

- 2.1. Retention permission is sought for an existing garage/storage shed and all associated site works.
- 2.2. The shed to be retained has an area of 125sqm and a ridge height of 4.27m. It is finished in painted render. The fuel store area is finished in corrugated metal sheeting and includes a metal awning.
- 2.3. The application was lodged with the planning authority on the 13/12/2018 with further plans and details submitted on the 25/07/2019.
- 2.4. The further information was accompanied by; revised site layout plans indicating the location of the shed granted under PL17/305 and omission of the vehicular entrance and driveway to the west, Land Registry Folio details , and proposals to address surface water drainage issues raised.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to **grant** retention permission 21/08/2019 subject to 5 no. conditions.

**Condition No. 1** Plans and particulars.

**Condition No. 2** Road drainage requirements.

**Condition No. 3** Restrictions on use.

**Condition No. 4** Site development works, waste, noise and hours of construction requirements. Of relevance to the appeal include the following;

B) Surface water run-off from the, roofs, roads and hardstanding areas shall be collected and disposed of within the site to soakways or proposed attenuation overflowing to the adjacent watercourse. No such surface water run off shall be allowed to flow onto the public roadway or other adjoining properties.

C) Soakways shall not be built within 5m of buildings, percolation areas, roads, etc. as per Section 1.5.8. of the Building Regulations 2010, Technical Guidance Document H, Drainage and Waste Water Disposal.

**Condition No. 5** Vehicular entrance to be closed within 6 months of grant of permission.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports (dated 14/02/2019 and 20/08/2019)

Basis for planning authority decision includes, 1<sup>st</sup> planning report notes the following;

- The sizeable domestic shed subject of this permission, which includes a turf shed, creates the possibility of increased traffic and, therefore, it is reasonable in planning terms to require a single entrance to the property.
- Site layout plan submitted does not indicate the shed granted under PL17/305.
- Recommends further information in relation to the above items, including issues raised in the third party submission and internal reports received.

The 2<sup>nd</sup> planning report dealt with the applicants response to the further information request and recommended that retention permission be granted.

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

**Area Engineer:** Report dated 21/01/2019 notes the original planning permission for the site under 79/170 restricted site access to a single point and recommends that this be imposed.

**Environment and Water Services:** Report dated 17/01/2019 recommends further information in relation to the surface water drainage including the location of the existing soakpit, septic tank and percolation area in relation to the nearby dwelling. Report dated 7/08/2019 recommends no objection subject to requirements.

### 3.3. **Prescribed Bodies**

The application was referred to the following prescribed bodies;

An Taisce, Arts Council, Development Applications Unit, Department of Culture, Heritage and the Gaeltacht, Heritage Council, Irish Water and Waterways Ireland.

No reports were received.

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

Two submissions were lodged with the planning authority from the following party's;

- Barry Cowen TD - in support of the proposal.
- John Delaney, Drumury, Canal Line, Pullough, Tullamore.

Objections to the proposal received by the planning authority have been forwarded to the Board and are on file for its information. The issues raised are comparable to those raised in the third party appeals and are summarised in section 6 below.

## 4.0 Planning History

**P.A.Reg.Ref.17/305:** **Split** decision 02/01/2018 to John and Betty Murphy. Retention permission **granted** for a domestic garage/fuel storage shed and all associated site works and drainage. Condition No. 2 restricts the use, No. 3 (a) and (b) relates to surface water drainage.

Retention permission **refused** for the existing entrance located. (see site layout plan and file attached)

**P.A.Reg.Ref.79/170:** Permission **granted** for original house on site.

## 5.0 Policy Context

### 5.1. Offaly County Development Plan 2014-2020

- 5.1.1. **Chapter 1** - Identifies Pollagh/Lemanaghan within the settlement hierarchy as a village.
- 5.1.2. **Chapter 7** – Heritage and Landscape

#### **Section 7.19** - Architectural and Archaeological Heritage Policies

**Policy AAHP-15** states '*It is Council policy that developments, which require vehicular access from public roads that were formerly towpaths or from existing towpaths along the Grand Canal, are very strictly controlled. This is in addition to restrictions relevant to the Canal's designation as a Natural Heritage Area and consequently as an Area of Special Control. It is policy to consider housing applications for established families\* only along roads that were formerly towpaths along the Grand Canal and that such developments will be strictly controlled.*

*\*Families for the purpose of this policy are defined as husband, wife and their children, siblings of the husband and wife and their sons and daughters.'*

### 5.2. Pollagh/Lemanaghan Village Plan

- 5.2.1. The appeal site is located just outside the development boundary of the Pollagh/Lemanaghan Village Plan. (see attached).

### 5.3. Natural Heritage Designations

The Clara Bog SAC Site Code 000572 is located approx. 5.6km to the north east. The Grand Canal a proposed NHA Site Code 002104 is located immediately to the north.

### 5.4. EIA Screening

Having regard to the nature the development to be retained, the nature of the receiving environment, and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A third party appeal was lodged by John Delaney, Drumury, the adjoining house to the west. The grounds of appeal can be summarised as follows;

- Disputes that he was aware of, or agreed to the planned build, or agreed to the use of one wall as a party wall in order to build his own structure.
- The appellant had allowed/agreed that the original structure, (that was built close to this location around the time the dwelling was constructed (nearly 40 years ago)). It was a much smaller flat roofed shed, that was in line with the gable end of the house along the site boundary.
- Accept that the boundary query is a civil issue due to the sale in 2003 of additional land to Mr. and Mrs. Murphy.
- The new build has walls on the new border standing at 2.8m tall along with an A roof stretching higher and casts shadows on the appellants property during early mornings.

- Has serious concerns in relation to the structure of the building. (Photos attached).
- Query why the applicants have indicated the location of the septic tank and percolation area on drawing no. 18.25.003, and not the location of their own tank/percolation area, and whether there is sufficient separation distance between both systems in compliance with the appropriate standards.

## 6.2. Applicant Response

A response to the third party appeal was lodged by Des Kilmartin Design Services on behalf of the applicant. It can be summarised as follows;

- Contest the third party claim of being unaware of the construction of the subject structure.
- Submit that the third party was fully aware of the shed structure being constructed and agreed that guttering not be provided, as they intended to erect a new structure which would tie into the back (western) wall of the shed structure.
- Have inspected the shed structure from the applicants property, no signs of structural instability were identified.
- Applicant is prepared to provide guttering to the building to address the collection and disposal of surface water.
- The appellants have at no stage raised concern in relation to health and safety issues with the applicant and submit that the perceived difficulties have arisen as a result of activities within the appellants property.
- The applicant is prepared to carry out the required repairs to the building to both appease the third party and protect the integrity of their structure.
- Contend that item 3 of the further information request referred to the existing septic tank and percolation area on the adjoining site, and not to the applicants property.
- Issues raised by the third party are civil matters and not valid planning issues.



- Request that the third party appeal be disregarded and that planning permission as granted by Offaly County Council be upheld.

### 6.3. **Planning Authority Response**

In a response dated 7/10/2020 the planning authority notes the appeal submission, refers to the report on file, and had no further observations.

### 6.4. **Observations**

None.

## 7.0 **Assessment**

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings:

- Principle of Development
- Drainage issues
- Impact on Residential and Visual Amenity
- Other Matters
- Appropriate Assessment

7.1.2. I refer the Boards attention to the previous history on the site under P.A.Reg.Ref.17/305 whereby retention permission was granted for another shed located to the side/east of the existing house. Under this permission retention permission was refused for a vehicular entrance from Grand Canal Way.

7.1.3. The current application for retention relates to a different shed located to the rear/west of the existing house. I note that this shed has not been subject to enforcement, and my assessment, therefore, will focus on the current proposal for retention on its own merits.

## **7.2. Principle of Development**

- 7.2.1. The subject site is located outside the development boundary of the village settlement of Pollagh as identified in the Offaly County Development Plan 2014-2020, Volume 2.
- 7.2.2. The existing garage/store subject of the current proposal for retention has an overall stated area of 125sqm. It is located to the rear/western boundary of the existing house and comprises a fuel store, garage, store and utility.
- 7.2.3. I can confirm from my site inspection that the individual sheds are currently in use for the storage of peat turf, household materials and domestic utility items.
- 7.2.4. I am satisfied given the nature of the use and design of the sheds that they are ancillary to the main residential use of the existing house. I note condition no. 3 of the notification of decision to grant retention permission in relation to restriction of use.
- 7.2.5. I recommend that if the Board are minded to grant permission for retention that the nature of use can be dealt with by way of a similar condition.
- 7.2.6. I am satisfied, therefore, that the proposed development for retention is acceptable in principle.

## **7.3. Drainage Issues**

- 7.3.1. Concern has been raised in the third party appeal in relation to the collection and disposal of surface water from the shed structure to be retained, which in the absence of guttering results in surface water flowing into the appellants property. In my opinion this is the crux of the appeal.
- 7.3.2. In response to the report of the Water Services and Environment section of the planning authority and issues raised in the third party submission, further information was sought specifically in relation to the surface water drainage including the location of the existing soakpit, septic tank and percolation area from the nearby dwelling.

- 7.3.3. The submitted site plan indicates the location of the surface water discharge pipes which drain to an existing drainage ditch along the eastern boundary of the appeal site. The approximate location of the septic tank in the rear yard of the appellants property was also identified.
- 7.3.4. The Water Services and Environment section were satisfied with the response by the applicant and recommended a grant of permission subject to requirements. Conditions no. 4 B) and C) of the notification of decision to grant permission refer as outlined in section 3 above.
- 7.3.5. I can confirm from my site inspection that there are no gutters running along the eaves of the garage/shed on the appellants boundary. I can also confirm the location of a surface water gulley in the yard of the appellants property provided to collect and drain surface water from the yard area. See photos attached.
- 7.3.6. I have had regard to the applicants response to the third party submission and appeal including their willingness to provide guttering to the shed and collecting and appropriately disposing of rainwater within their own property.
- 7.3.7. I also note the applicants response to further information where it is stated that the building subject of the current application was constructed 20 years ago, and over that period there have been discussions between both parties on resolving the matter.
- 7.3.8. In my opinion, this is ultimately a civil matter between both parties and not a planning matter. I am therefore satisfied that the disposal of surface water can be dealt with by way of condition.
- 7.3.9. In relation to foul drainage I note also the reports of the Water Services and Environment section of the planning authority, and the details submitted in relation to the location of existing septic tanks and percolation areas both under the current application and the earlier application under P.A.Reg.Ref.17/305 and associated conditions attached.
- 7.3.10. I have examined Drawing No. 18-25-003 Rev A and am reasonably satisfied given the generous areas of the overall plots that the existing foul drainage arrangements are acceptable, and do not give rise to public health concerns.

#### **7.4. Impact on Residential Amenity**

- 7.4.1. Concern has been raised in the third party appeal in relation to overshadowing.
- 7.4.2. In this regard, I note the ridge height of the existing single storey structure, which at 4.2m is not considered excessive. The subject structure is located to the east of the appellants rear garden/yard. I can confirm at the time of my site inspection mid-morning in early March, that there was no overshadowing from the existing structure on the rear garden/yard of the appellants property.
- 7.4.3. I also note the orientation to the rear elevation of both respective properties, which benefit from a south facing aspect and respective rear gardens.
- 7.4.4. Concern has also been raised in the third party appeal in relation to noise, and I note condition No. 4 E) and F) of the notification of decision to grant permission refers to noise level restrictions. In my opinion these requirements in relation to noise are not necessary.
- 7.4.5. In my opinion the impact on residential amenity is overstated by the appellant, and there is no obstacle, on this basis, to granting permission for retention of the existing shed structures.

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

- 7.5.1. *Sufficient Legal Interest/Legal Issues/Boundary Issues* - The issue of ownership are civil matters and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'. Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management – Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: '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...'
- 7.5.2. If the Board are minded to grant retention permission, an advisory note stating the provisions of section 34(13) of the Planning Act should be included.
- 7.5.3. *Structural Issues* - The appellant has raised concerns in relation to the structural stability of the existing shed and have submitted photographs to illustrate the

condition of the structure. While strictly speaking not a planning matter I can confirm from my inspection, of the garage/shed to be retained from the appellants property, that the building did display some superficial cracks in the paintwork, and that part of the fascia board had fallen away into the appellants property. However, otherwise the structure and roof appeared in tact and in the absence of a structural survey report, I am satisfied that that there is no substantive basis to this ground of appeal.

- 7.5.4. *Traffic Safety* – The existing house is served by two vehicular entrances from Grand Canal Way a single carriageway/tow path on the southern side of the Grand Canal. The Area Engineer of the planning authority expressed concern given the size of the garage/shed to be retained that there is the potential for increased traffic and therefore recommended a single entrance only to the property be provided. Specifically, they recommended that the easterly entrance be permanently closed and reinstated with a roadside boundary to match the adjacent boundary.
- 7.5.5. The Area Engineer also refers to the parent permission for the house under P.A.79/170 which restricted access to the house to one point only.
- 7.5.6. The applicant in their response to the further information request indicated on the revised site layout plan Drawing No. 18-25-003 Rev A the closure of the vehicular entrance located to the northwest closest to the appellants property to the west. It also indicates a single entrance to the overall site.
- 7.5.7. I note this revised site layout drawing particularly as under the more recent permission P.A.Reg.Ref.17/305 permission for retention on a third entrance further to the north east was refused.
- 7.5.8. I am satisfied that the provision of a single entrance to serve the overall site as indicated on Drawing No. 18-25-003 Rev A is acceptable from a traffic safety perspective given the narrow width of the public roadway which adjoins the Grand Canal along which there is no barrier. I also note that this approach is consistent with Policy AAHP-15 of the Offaly County Development Plan 2014-2020 which seeks to restrict vehicular access from public roads that were formerly towpaths or from existing towpaths along the Grand Canal.
- 7.5.9. If the Board as minded in this instance to grant permission for retention, I recommend that a condition requiring the closure of the vehicular entrance be carried out within a specified period of six months.

7.5.10. I would also draw the Boards attention to the fact that this is a new issue and not one raised in the appeal. In this circumstance the Board may wish to recirculate the application to the relevant parties.

## 7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and scale of development proposed to be retained and to the nature of the receiving environment, an established residential area, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

## 8.0 **Recommendation**

8.1. I recommend that retention permission should be **granted** subject to conditions for the reasons and considerations as set out below.

## 9.0 **Reasons and Considerations**

Having regard to the nature, scale and design of the garage/store to be retained, which is ancillary to the main house, it is considered that, subject to compliance with the conditions set out below, the development for which retention is sought would not seriously injure the residential or visual amenities of the area, would not be prejudicial to public health, would not give rise to a traffic hazard. The development for which retention is sought would, therefore, be in accordance with the proper planning a sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application 13/12/2018, and as amended by further information 25/07/2019 except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. The existing house and garage/store to be retained shall be jointly occupied as a single residential unit and shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

**Reason:** To protect the amenities of the adjoining property to the west.

2. All uncontaminated roof water from the garage/storage shed shall be collected and discharged in a sealed system, to adequate soakpits.

**Reason:** In the interests of environmental protection and public health.

3. The existing vehicular entrance located to the northwest of the overall site as indicated on plans submitted 25/07/2019 Drawing No. 18-25-003 Rev A shall be closed within six months of the granting of this permission. The overall site shall be served by a single vehicular entrance only.

**Reason:** In the interests of clarity and traffic safety.

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Susan McHugh  
Senior Planning Inspector

12<sup>th</sup> March 2020