



An
Bord
Pleanála

Inspector's Report

ABP-308056-20

Development	Retention permission for a fuel shed and stone garden structure
Location	Clahane House, 3 Dromadoon, Mountrath Road, Portlaoise
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	20/334
Applicant	Paul Ryan
Type of Application	Permission for Retention
Planning Authority Decision	Grant Permission for Retention
Type of Appeal	Third Party v Grant of Permission for Retention
Appellant(s)	Michael & Patsy Dollard and Charlie & Elizabeth O'Neill
Observer(s)	None
Date of Site Inspection	17.11.2020
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located on the western side of Portlaoise, within the built-up area.
- 1.2. Dromadoon is a cul-de-sac of seven houses of varying design. The site is occupied by a one and a half storey house. The structures to be retained are located in the rear corners of the property, the fuel shed in the north western corner and the stone structure in the south western corner. There is a hedge/tree line around the rear boundaries of the site.
- 1.3. The site has an area of 0.196 hectares.

2.0 Proposed Development

- 2.1. Permission for retention is sought for a fuel shed and a stone garden structure.
- 2.2. The fuel shed has a floor area of 33.4sqm and a height of 2.9 metres. It is externally finished in unpainted render. The stone garden structure has a floor area of 4sqm and a height of 3.1 metres.

3.0 Planning Authority Decision

3.1. Decision

Permission for retention was granted subject to five conditions including surface water disposal, a restriction on use to domestic-related purposes only, external lighting and a development contribution.

3.2. Planning Authority Reports

- 3.2.1. The Planning Report is the basis for the planning authority decision. It concludes that the proposal is acceptable in design and visual amenity terms.

3.2.2. Other Technical Reports

Area Office – No objection.

Road Design – No objection.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

3.4.1. A joint third party submission was made by Michael & Patsy Dollard and Charlie & Elizabeth O'Neill. The issues raised are generally similar to those referenced in the grounds of appeal but also include:

- The Local Authority's Building Control and Environment Sections have been trying to resolve the ongoing situation with the multi-fuel burner in the shed to be retained since 2015. The Local Authority issued an order that smoke must be above eaves level and only lit at certain times. This is ongoing with the applicant, Local Authority and the Ombudsman.
- The multi-fuel burner is not domestic in nature and exceeds gas house emissions currently in legislation. This should be proven to the Local Authority.

4.0 **Planning History**

None.

5.0 **Policy Context**

5.1. **Portlaoise Local Area Plan 2018-2024**

5.1.1. The site is in an area zoned 'Residential 1 – Existing Residential' which has an objective 'to protect and improve the amenity of developed residential communities'.

5.2. Natural Heritage Designations

- 5.2.1. The closest Natura 2000 site is Slieve Bloom Mountains SPA approx. 7.1km to the north west. The closest heritage area is Ridge of Portlaoise pNHA approx. 1.2km to the east.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal are jointly submitted by Michael & Patsy Dollard, 4 Dromadoon and Charlie & Elizabeth O'Neill, 5 Dromadoon, the two houses adjacent to the north. The main points made can be summarised as follows:

- The structure is referred to as a fuel store throughout the assessment in the Planning Report. The unsightly stainless steel flue is not referenced. Incorrect drawings were submitted which should have invalidated the application and there is a concern the site was not visited. The grant of permission after five weeks raises concerns that the appellants' submission could not have been considered properly. At a minimum, a further information request should have issued.
- The description as retention of a fuel shed is inaccurate. There is a multi-fuel boiler/incinerator in the shed that is more commercial than domestic in size and a stainless steel flue in excess of 6 metres. The fuel stored is solid e.g. wood, coal, turf. The amount of fuel to operate it is considerable. It may be a fire hazard in such close proximity to a hedge. There is no comment from the Fire Officer possibly because of the inaccurate application and omission of key elements. The grant should be overruled because the structure is not correct in wording nor shown correctly.
- In the Planning Report and development plan, effect on residential amenity is confined to overlooking and shadowing. There is no mention of the flue and the smoke emitted. Winds blow the large amounts of smoke into the appellants' houses and rear garden spaces and it can be unbearable at times.

- The inaccurate description and omission of the flue made it difficult to fully assess the application. If it was considered again it would contravene the County Development Plan 2017-2023 with reference to Policies ES8 and ES11 (air quality), Section 6.6 (Energy and Communications) and Section 6.6.1 (Renewable Energy).
- The multi-fuel system is extremely large in size, contravenes the development plan, the SEAI better homes scheme and the government's commitment to reduce emissions by 7% year on year before 2030. The Planning Report states that issues raised are a matter for the Environment Section and are outside the scope of the planning application. This was under the remit of a simple fuel shed retention whereas it is more complex.

6.2. Applicant's Response

The main points made can be summarised as follows:

- Internal emails from the County Council are submitted which state that the subject garage is not in breach of the guidance given in Technical Guidance Document Part J (Heat Producing Appliances) and therefore not in breach of the building regulations. The height of the chimney was found to be compliant with the said regulations and the appellants are aware of this. The garage is for residential heating purposes only and any suggestion of it being a fire hazard is false.
- A third party contractor was employed by the Council in January 2018 to install an air quality monitoring device in the appellants' garden (No. 4). This illustrated a daily average of 11 ug/m³ for PM₁₀ where the daily limit under the 'Ambient Air Quality and Cleaner Air for Europe (CAFE) Directive is 50 ug/m³. The report proves no pollution has occurred and the appellants are aware of this. The applicant is not aware of any legislation for 'gas house' emissions relating to a domestic appliance as referenced in the appellants' submission to the Council. The independent report proves that the domestic heating system adheres to the County Development Plan 2017-2023.
- The matters raised are outside the remit of the planning process.

- The statement that the Council failed to visit the garage is false.
- The appeal is vexatious in nature. The appeal is an attempt to frustrate any pending sale of the house.

6.3. **Planning Authority Response**

None.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

The main issues are those raised in the grounds of appeal and the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Fuel Shed
- Stone Garden Structure
- Appropriate Assessment

7.1. **Fuel Shed**

- 7.1.1. This is the focus of the grounds of appeal, specifically the use of a burner within the shed and the emissions produced.
- 7.1.2. The fuel shed is located in the north west corner of the site to the rear of a single storey garage and with a hedge/tree line immediately to its rear and side. The building itself is limited in terms of height and bulk. It has no impact on third party property and is

not visible outside the rear garden of the property. There is a stainless steel flue attached to the side of the structure which is significantly higher than the height of the shed. This is visible from the rear of the adjacent property (No. 4) and it is also visible from the cul-de-sac. Though validation of a planning application is a matter for the Local Authority, I note the elevation drawings submitted with the planning application omit the flue. Revised elevation drawings showing this flue should be submitted for clarity. Given the slim nature of the flue I do not consider that it, in itself, results in a significant visual incongruity.

- 7.1.3. The applicant's response to the grounds of appeal includes internal Council correspondence which states that the chimney/flue is not in breach of Part J of the Building Regulations. Some elements of this correspondence are redacted. Notwithstanding, compliance with building regulations is separate to consideration of a planning application.
- 7.1.4. The shed is described as a fuel shed in the planning application. On inspection there was timber and wood stored in the shed. There was also what is described as a multi-fuel burner. It is this burner, and its emissions, that is the central issue in the grounds of appeal. From the documentation on file this has been subject of ongoing concern since c.2014 and has involved various internal sections of the Council and the Ombudsman. The applicant's response to the grounds of appeal includes an Ambient Air Monitoring Report carried out between January and March 2018 to assess ambient concentrations of particulates and gases at No. 4. While the report noted that, on one of the four occasions the meter was visited by a technician smoke was dense and the smell of combustion gas was very strong, the results show that the average $\mu\text{g}/\text{m}^3$ (micrograms per cubic metre of air) was substantially less ($11 \mu\text{g}/\text{m}^3$) than the EU Ambient Air Quality and Cleaner Air for Europe (CAFE) Directive (2008/50/EC) limit of $50 \mu\text{g}/\text{m}^3$. The number of times short term measurements exceeded $50 \mu\text{g}/\text{m}^3$ was 424 no. This indicates that there are occasions when emissions from the flue exceed limits but overall, the emissions are substantially less than the CAFE Directive limit. Policy ES11 of the Laois County Development Plan 2017-2023 promotes the preservation of ambient air quality in accordance with this directive.
- 7.1.5. The primary issue in the grounds of appeal relates to the type of burner installed and the emissions produced. There is a concern in the grounds of appeal that the multi-fuel boiler is more commercial than domestic. This is disputed by the applicant. I do

not consider that the specific type of boiler or its emissions are matters relevant to the planning code but are more appropriately addressed and assessed by environmental or other legislation or regulations. I would note that a grant of planning permission for this application does not mean that the burner cannot be removed should it be required under relevant legislation or regulations.

- 7.1.6. Therefore, having regard to the foregoing, I consider that the structure subject to the planning application is acceptable and has no adverse impact on the amenity of adjacent property. I do not consider the type or nature of the burner or its emissions to be a material consideration for the planning process. The planning code does not control or regulate these burners.

7.2. Stone Garden Structure

- 7.2.1. This structure is in the south west corner of the garden. It is limited in size and scale and is not visible outside the rear garden area of the property. I do not consider that there is any issue with this structure.

7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location remote from and with no hydrological pathway to any 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 planning permission for retention 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 and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not injure the visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and 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, 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 interest of clarity.

2. Revised elevation drawings of the fuel shed, showing the flue, shall be submitted to, and agreed in writing with, the planning authority within eight weeks of the date of this order.

Reason: In the interest of clarity.

3. The shed shall be used solely for uses incidental to the residential enjoyment of the house on site and shall not be used for habitable purposes or any commercial purpose.

Reason: In the interest of the amenity of property in the vicinity and the proper planning and sustainable development of the area.

4. Drainage arrangements, including 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.

5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within eight weeks of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Anthony Kelly

Planning Inspector

24.11.2020