



An
Bord
Pleanála

Inspector's Report ABP-308462-20

Development	Permission is sought for the retention and completion of the construction of a domestic storage shed.
Location	Tankardstown, Rathkenny, Co. Meath.
Planning Authority	Meath County Council.
Planning Authority Reg. Ref.	LB200218.
Applicant(s)	John & Geraldine Lynch.
Type of Application	Retention Permission & Planning Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party
Appellants	Keith Kuss & Leona Tubbritt.
Observer(s)	None.
Date of Site Inspection	15 th day of December, 2020.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The irregular shaped appeal site has a given site area of 0.19ha and it is located on the southern side of a heavily trafficked country road (Note: L-16224-0), directly opposite the Rathkenny GAA club and pitch, in the townland of Tankardstown, c7kilometers to the north west of Slane village, in County Meath.
- 1.2. The appeal site is accessed and egressed via two separate gated entrances onto the L-16224-0 with the easternmost entrance being located c54m to the west of its T-junction with the L-5603.
- 1.3. The site contains a vernacular modest in height 2-storey terrace group of three with the westernmost two terrace properties having the appearance from the documentation provided of being amalgamated into one and with the appeal property including land that wraps around the rear and easternmost boundary of the terrace group. This includes a driveway linking to the easternmost entrance serving the site. This driveway at its northernmost end is bound by an under renovation single storey period in built form and material structure. This structure is setback from the eastern elevation of the terrace group with what appears to be a private open space.
- 1.4. The appeal site contains a well-maintained garden and a number of hard surfaced spaces to the west, south and east. Within these sundry areas are a single storey domestic garage, a glass house structure, a playhouse on stilts and the completed foundation base for the storage shed the subject of this application.
- 1.5. The site is located in open countryside that contains a significant proliferation of one-off houses. The landscape character is recognised as being of high amenity value under the Development Plan (Rathkenny Hills). The site located in close proximity to 'Tankardstown House' which is located to the east.

2.0 Proposed Development

- 2.1. Permission is sought for the retention and completion of a domestic storage shed structure with a given gross floor area of 31.4m² and a height of 2.9m. The proposed finish is PVC coated steel.
- 2.2. On the 28th day of August, 2020, the applicant submitted their **further information response**. This response sought to clarify the land to which this application relates

and was accompanied by revised public notices due to the amendments that were made to the site boundaries.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 22nd day of September, 2020, the Planning Authority decided to **grant** retention permission and planning permission for the development sought under this application subject to 4 no. conditions. The conditions imposed included:

Condition No. 2: Restricts any development over foul and surface water networks.

Condition No. 3: Restricts the use of the shed structure.

Condition No. 4: Requires all surface water drainage to be disposed of within the boundaries of the site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **final Planning Officer's report** is the basis of the Planning Authority's decision and it indicates that the errors of the initial application have been satisfactorily dealt with by way of the applicant's further information response. It also includes the following comments:

- It is generally sought that such structures are finished similarly to the finish of the associated dwelling; however, in this instance due to the lack of visibility of the structure from the front of the property it was considered that the shed would not negatively impact upon views from the public road.
- The proposed development, by itself or in combination with other plans and developments in the vicinity, would not be likely to have a significant effect on any European Site or Sites and as such a Stage 2 Appropriate Assessment was not deemed necessary.
- A grant is recommended subject to safeguards.

The **initial Planning Officer's Report** concluded with a request for further information on the following matters:

Item No. 1: Sought clarification on the sheds intended use.

Item No. 2: An agreement of time and date to inspect the site.

Item No. 3: Clarification sought on landownership. In addition, clarification on finished floor levels relative to existing buildings on a revised site layout plan were sought.

Item No. 4: Highlights that new public notices may be required.

3.2.2. **Other Technical Reports:** None.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. The appellants made a submission to the Planning Authority during the course of its determination of this application. I have read this submission and I consider that the substantive concerns raised therein correlate with those raised in their appeal submission. No other submissions were received by the Planning Authority during their course of determination of this application.

4.0 **Planning History**

4.1. **Site**

P.A. Ref. No. LB191211: Planning permission sought for the construction of a domestic shed at the same location as the shed structure subject of this application. This application was **withdrawn** on the 11th day of February, 2020.

4.2. **Setting:**

4.2.1. No relevant planning history.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Meath County Development Plan, 2013 to 2019, is the statutory plan for the area, under which the site is located on un-zoned land outside of a defined settlement within the open countryside. Section 10.7 of the Development Plan in general seeks that rural residential developments in their siting and design blend sympathetically with their surroundings as well as do not appear visually incongruous in their landscape setting.

5.2. Natural Heritage Designations

- 5.2.1. The site is located c4.8km to the north west of the SAC - River Boyne & River Blackwater Special Area of Conservation (Site Code: 002299) and c5.3km to the north west of SPA – River Boyne & River Blackwater Special Area Protection Areas (Site Code: 004232).

5.3. Environmental Impact Assessment/Screening

- 5.3.1. Having regard to the modest, nature and scale of the development for which retention permission and planning permission is sought, the significant separation distance between the site and the nearest European sites as set out above, the lack of any hydrological link to these sites or any other quantifiable link, I consider that 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 in this case.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of this 3rd Party appeal can be summarised as follows:
- The further information has not in their opinion satisfied the errors in the delineation of the site.

- The applicants erected a site notice on their lands.
- The documents on the public file have not been updated on foot of the applicant's further information response.
- It is contended that land shown as part of the site is in fact in their ownership and therefore the documentation submitted is misleading.
- It is contended that the applicants have done works that have extended onto land within their ownership alongside erected CCTV overlooking the appellants property and grills that block windows on the appellants garden structure.
- The proposed development would give rise as a result of the intended use of the shed structure to residential disamenity for them. With further diminishment of their residential amenities arising from overlooking, overshadowing and loss of light.
- The placement of a building of this size and with unsightly industrial look relative to their property shows disregard to their residential amenities.
- There were other locations within the applicant's landholding that would have been more suitable for the construction of such a structure.
- Works commenced on the subject structure with the absence of any planning permission.

6.2. Applicant Response

6.2.1. The applicant's response to the grounds of this 3rd Party appeal can be summarised as follows:

- The lands subject to this application are in their ownership and are correctly delineated.
- There is no encroachment onto the appellants lands as is contended by them.
- The landownership issues were addressed in their further information response to the Planning Authority.
- There are separate civil proceedings on-going between the appellants and the applicant in relation to land, boundary, and right-of-way related matters.

- Security gates were erected for protection of the applicant's property as was the CCTV cameras.
- The appellants have engaged in unauthorised development including the placement of windows looking immediately onto their property. This has adversely impacted on their residential amenities and are subject to enforcement proceedings.
- It is contended that the overlooking, overshadowing, loss of light and the proposed use of the shed are being brought up as issues, but the overriding issues are the site delineation and boundary matters. These are civil matters.
- The shed is a modest in size and height domestic shed containing no windows. It is also setback from the appellants property. With the setback being such that no serious adverse overlooking, loss of light or overshadowing would occur to the appellants property.
- The location of the shed at this location is due to the drainage network on site.
- The green cladding of the shed will ensure that it would not be incongruous in its context.
- Concerns raised by the appellants in relation to drainage and the shared septic tank have been addressed by way of condition by the Planning Authority.
- Some proprietary works were carried out in order to erect a shed structure to a size that would be consistent with the exempted development conditions and limitations for such structures, but it was considered that the size would be insufficient to accommodate their storage needs.
- The appellants objections are bogus, vexatious, and inaccurate.

6.3. Planning Authority Response

6.3.1. The Planning Authority's response can be summarised as follows:

- All matters raised by the appellants in their submission have been addressed.
- Reference is made to their Planning Officer's reports.
- The proposed development is consistent with the local planning provisions.

- The planning documentation and the public notices are correct.
- Any material discrepancies were considered and where necessary clarification was sought.
- No works are proposed on the appellants property and therefore their written consent is not required.
- It is noted that the foundations of the proposed storage shed had commenced and regard to this was had during their determination of this application.
- The Board is requested to uphold its decision.

7.0 Assessment

7.1. Preliminary Comment

- 7.1.1. I consider it first prudent to address the applicants concerns raised in their response to the grounds of appeal in that they essentially consider that the appeal case is vexatious in its merits. Notwithstanding, I consider that the appellants have made valid planning concerns in relation to the development sought under their appeal submission to the Board. Including but not limited to visual and residential amenity concerns.
- 7.1.2. I am cognisant that other issues that are raised in the appeal submission such as those relating to procedural issues in terms of the Planning Authority's handling of the application is outside of the Boards remit in their adjudication of this case. In addition, having conducted an inspection of the site alongside having regard to the drawings submitted both with the original application and as part of the applicant's further information response I consider that these are satisfactory to allow the Board to make an informed decision on the case before them.
- 7.1.3. I am also cognisant that this application includes a retention component with this essentially relating to a concrete foundation that is *in situ*. There was no evidence of any recent works to this foundation structure, no materials or equipment in the relation to the construction of the shed structure and the only substantial construction works that were ongoing at the time of my site inspection related to those on the appellant's site. Any concerns in terms of unauthorised development in relation to the appellants ongoing works, which I note is raised as a concern by the applicants, is not a matter

for the Board to adjudicate upon but a matter to be directed to the Planning Authority whose remit it is to deal with such matters as they see fit.

- 7.1.4. Notwithstanding, in relation to the application before the Board the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered “as with any other application”. This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place.
- 7.1.5. On the matter of landownership, I also note that the appellants contend that the applicant has included land within their ownership without their consent. The land which appears to be contested is situated alongside the appellants eastern boundary with the structure that the appellants undergoing works too having recently been fitted with transparent windows that look immediately onto a driveway that serves the applicants easternmost driveway and access onto the local road network.
- 7.1.6. Consistent with the requirements of Section 22 of the Planning and Development Regulations, 2001 (as amended), the applicant submits in their submissions to the Board and the Planning Authority that the written consent of the legal owners of the site is therefore necessary to have made the application in its current form.
- 7.1.7. This matter was the one of the items which the Planning Authority sought clarifications on during their determination of this case.
- 7.1.8. On the basis of all information on file I am satisfied that this application and the development sought relates to land in the applicant’s landownership and I consider that the applicant has demonstrated sufficient legal interest in the land to bring forward the planning application without the need of the consent of the appellants. I do not consider that the appellant in this case has supported unequivocally by way of evidentiary proof that this is not the case.
- 7.1.9. Moreover, it is my view that there are deep underlying civil concerns both raised and on-going between both the 1st and the 3rd Parties subject of this appeal.
- 7.1.10. I consider that the Board has no statutory power to adjudicate upon the matters relating to title and ownership of property raised in the grounds of appeal and by the applicant

in their response to the grounds of appeal. These matters constitute civil matters that can only be resolved by agreement between the parties or in the civil courts.

- 7.1.11. The Development Management Guidelines make this clear. In this regard, I note the provisions of Section 5.13 of the Guidelines which state '*...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 by the courts.*'
- 7.1.12. I also consider that the development for which retention permission and planning permission is sought, if permitted, as set out in the accompanying documents would not give rise to any encroachment and/or oversailing of the appellants or indeed any other 3rd Parties land. I therefore consider it would be unnecessary in this appeal case should the Board be minded upholding the decision of the Planning Authority to include an advisory note reiterating Section 34(13) of the Planning and Development Act, 2000 as amended. I note that this indicates that: "*a person shall not be entitled solely by reason of a permission or approval under this section to carry out a development*".

7.2. Assessment

- 7.2.1. Having regard to the nature of the proposed development sought under this planning application, the relevant planning provisions and issues raised on file, I consider that the key matters for this appeal relate to the principle of the development and the impact of the proposed development on the visual amenities of the site's context as well as residential amenities of properties in its immediate vicinity. In particular, due to the site's locational context the adjoining residential properties; the design and layout of the proposed dwelling; and the access to serve the proposed development. I also consider that the matter of 'Appropriate Assessment' requires examination. I propose to deal with these matters in turn in my assessment below.
- 7.2.2. On the matter of the principle of the development the site consists of a mature and long-established residential plot of land that forms part of a historic terrace group of three originally modest in built form 2-storey vernacular cottages that have been subject to significant alterations and additions since their construction.
- 7.2.3. The rationale for the development relates to the applicants need for a shed with a given size of c31.4m² for the storage of items incidental to the enjoyment of the main dwelling.

- 7.2.4. The shed structure could not in my view be considered as a substantial one given its overall floor area and its modest maximum ridge height of 2.9m with the ridge height sloping down to an eave's height of 2.55m. Thus, the shed has a low sloping roof profile. The shed envelope in its entirety would be finished PVC coated steel and the shed structure would sit on a base with a given 4.15m by 8.15m dimension. The base of the shed is essentially rectangular and has a given orientation that could be generally described as east west with the western site having a southerly inclination with the southerly most wall mirroring the orientation of the rear boundary hedge which I observed consists of a tall well maintained c2m beech hedgerow. With this structure being set back in excess of 6m from the much taller rear boundary of the appellants property which includes a mature tree.
- 7.2.5. In addition to this there is also in excess of 2m evergreen hedgerow that provides a level of separation from the main private open space serving the main dwelling and I further observed that the rear hedgerow of the site continues in an easterly direction around the applicant's landholding and the driveway serving their easternmost entrance onto the local road network. In addition to this the topography slopes from the carriageway of the adjoining local road to the rear boundary of the site.
- 7.2.6. Thus, the positioning of the garage structure would not be highly visible within its immediate setting nor would it be highly visible from the public domain. I therefore share the view of the Planning Authority and the appellants that the pvc cladding is not consistent with that of the main dwelling or the period terrace it forms part of. Whilst a more site context sympathetic external finish and treatment would be preferable, notwithstanding, it is not uncommon for pvc structures like this to be provided within the curtilage of a residential property as they tend to provide a quick solution in terms of construction of such a shed structure and there many domestic examples available. In this case the modest in height and built form shed structure would be positioned where it would not be highly visible from the public domain or otherwise, due to the existing natural features.
- 7.2.7. Subject to an appropriate colour for its steel envelope being agreed and the hedgerows being maintained at no less than their current height, I am satisfied that these measures would ensure that this structure would be sympathetic to and not visually obtrusive, when viewed from its immediate to wider landscape context, despite

the vulnerability of this landscape setting to change due to its designated high amenity value under the current Development Plan.

- 7.2.8. In terms of potential for the shed structure to give rise to adverse impacts on the residential amenity of the appellants property I consider that the modest built form, in particular its height, together with the separation distance between the shed structure and the rear boundary of the appellants property as well as the rear elevation of the original 2-storey terrace dwelling itself is such that it would not give rise to any undue serious loss of light or overshadowing. I also consider that it would not give rise to any greater potential for overlooking to occur between the appellants properties and the applicant's properties.
- 7.2.9. In terms of outlook from the windows at the first-floor level of the appellants property I note that there is no right to a view and irrespective of this the structure as discussed above is modest in its overall nature, scale, mass, and height alongside would be located within a rear of a curtilage that I observed was well maintained and cared for.
- 7.2.10. Moreover, the shed use is indicated as being incidental storage to the main dwelling and this type of use is unlikely in my view to give rise to significant nuisances outside of the short-term nuisance that may arise during its completion. In relation to such nuisances, it is common for grants of permission to include conditions that seek to mitigate these impacts in terms of noise, dust, hours of construction and the like.
- 7.2.11. Based on the above considerations it is my view that the proposed development would not warrant a refusal of permission based on visual and/or residential amenity concerns.

7.3. Appropriate Assessment

- 7.3.1. This appeal site is not located within, adjoining, or neighbouring any designated site. The closest European site is the River Boyne & River Blackwater Special Area of Conservation (Site Code: 002299) which is located c4.8km to the north west of the site.
- 7.3.2. Having regard to the modest nature, scale and use of the development sought and to the nature of the receiving environment, the sites remote location from any European site and the lack of any tangible hydrological links either within or adjacent to the site boundaries to any European site, no appropriate assessment issues arise.

7.3.3. I therefore consider it is reasonable to conclude on the basis of the information available that the proposal either individually or in combination with other plans or projects would not adversely affect the integrity of any European sites having regards to their conservation objectives and the separation distances involved. 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 in this case.

7.4. Other Matters Arising

7.4.1. **Drainage:** I concur with the Planning Authority in their conclusion in relation to drainage matters and should the Board be minded to permit the proposed development I recommend that it include similar conditions as safeguards.

7.4.2. **Access:** This appeal site is served by two existing entrances onto the public road network and in my view would not result in any intensification of access and egress from them. I therefore do not consider that the proposed development would give rise to any significant road safety and/or traffic hazard issues.

7.4.3. **Development sought under this application:** The Board is restricted in their *de novo* assessment of this appeal case to the development sought under the planning application.

7.4.4. **Enforcement:** The Board does not have jurisdiction over enforcement matters. These should be directed to the Planning Authority to deal with as they see fit.

8.0 Recommendation

8.1. I recommend that retention permission and planning permission is **granted**.

9.0 Reasons and Considerations

9.1. Having regard in particular to the position of the shed structure to which this application relates, the setback distance of the shed from the party boundary with the adjacent property and the overall modest height, scale, and mass of the shed with its location to the rear of a terrace group whose rear boundaries consist of a tall beech hedge, it is considered that the development would not give rise to any serious injury to

residential and visual amenities. Including as viewed from the public domain given that the site is located in open countryside whose landscape character is designated as being of high amenity value. 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 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 28th day of August, 2020, 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. The rear boundaries of the site shall be maintained at no less than 2meters height.

Reason: In the interest of visual amenity.

3. The shed subject of this application shall not be use used for human habitation, commercial use, industrial use or for any other purposed other than a purpose incidental to the enjoyment of the dwelling.

Reason: In the interests of orderly development.

4. Details of the materials, colour, and texture of the external finish of the shed structure shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. (i) No development shall take place over the foul and surface water networks and drainage systems on site, unless otherwise agreed in writing with the Planning Authority.

(ii) Surface water from the site shall be disposed within the boundaries of the site and shall not discharge onto the public road or adjoining property.

Reason: In the interest of public health, in the interest of proper planning and sustainable development of the area and to ensure a satisfactory form of development.

6. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

Patricia-Marie Young
Planning Inspector

21st day of December, 2020.