



An
Bord
Pleanála

Inspector's Report

ABP-308494-20

Development	Retention of demolition of a derelict shed and construction of a replacement storage shed and adjustments to road boundary and site entrance, including all associated site works
Location	Kilbiller, Coolbawn, Nenagh, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	20/234
Applicant(s)	Robert Lane
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)	David & Sheila Moran
Observer(s)	None
Date of Site Inspection	03.02.2021

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located off the Regional Road R493 approx. 8km south west of Borrisokane and approx. 1.7km east of Lough Derg, in north Co. Tipperary.
- 1.2. The site is occupied by a shed set back into the rear of the site. There is a gravel surface elsewhere on site. There is a tree line along the north west/side and south west/rear site boundaries and a hedge along the south east site boundary. Some stone walls are also part of boundaries. The roadside boundary comprises a metal gate with concrete block pillars and a stone wall. The roadside boundary is set back from the R493. There is a detached dormer house to the north west, set back from the road, and two single storey houses further to the south. There is a field immediately to the side and rear.
- 1.3. The site has an area of 0.042 hectares.

2.0 Proposed Development

- 2.1. Permission for retention is sought for the demolition of a derelict shed, the construction of a shed and adjustments to the road boundary and site entrance.
- 2.2. The shed to be retained has a floor area of 52.33sqm, a height of 4.1 metres and it is externally finished in green cladding.
- 2.3. Further information was submitted in relation to the previous and current uses of the sheds and a solicitor's letter in relation to ownership of the site.
- 2.4. Clarification of further information was submitted in relation to the site entrance and sightlines, an internal turning circle and a 'Report on Archaeological Assessment' prepared by David Sweetman and dated 21.08.2020.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Permission for retention was granted subject to two conditions including that shed shall not be used for any residential, commercial or industrial purpose and shall not be utilised for vehicles for the purpose of maintaining the domestic garden.

3.2. Planning Authority Reports

- 3.2.1. Three Planning Reports form the basis of the planning authority decision. The third report states that, having examined the plans and particulars submitted with the planning application, it is recommended permission for retention be granted. It is considered that the development complies with the policies and objectives of the North Tipperary County Development Plan 2010, as varied, and the development does not have an adverse impact on the character of the area or the amenities of adjoining properties.

3.2.2. Other Technical Reports

District Engineer – No objection with regard to roads.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

- 3.4.1. One submission was received from David & Sheila Moran, Kilbiller, Coolbawn. The issues raised are largely covered by the observation received with the exception of the following:

- The development description is misleading.
- The applicant does not hold sufficient legal interest in the site.
- The content of the planning application form is unclear and misleading.
- The ground level of the site was significantly increased, trees and a hedgerow removed, and the original wrought iron gates removed.

- 3.4.2. A submission was also received from David & Sheila Moran on foot of the clarification of further information response. The submission relates to the vehicular entrance and the surface of the site.

4.0 **Planning History**

- 4.1.1. There has been no previous application on site.
- 4.1.2. Warning letter P.A. Reg. Ref. TUD-19-063 issued to the applicant on 15.07.2019 relating to the 'erection of a new metal clad shed, and alterations to existing entrance (materially altering and widening of the existing entrance), along with the formation of an additional entrance to the adjoining dwelling site'. P.A. Reg. Ref. 20/235 granted the applicant permission for retention of a new entrance to serve the existing residential development including all associated site works.

5.0 **Policy Context**

5.1. **North Tipperary County Development Plan 2010 (as varied and extended)**

- 5.1.1. This Plan is in place until such time as a single County Development Plan is prepared for Tipperary subsequent to the preparation of the Regional Spatial and Economic Strategy.
- 5.1.2. Chapter 7 (Landscape, Water Quality & Heritage) and Chapter 10 (Development Management Standards) are relevant to this application.

5.2. **Natural Heritage Designations**

- 5.2.1. The closest Natura 2000 sites are Lough Derg, North-east Shore SAC and Lough Derg (Shannon) SPA approx. 1.7km to the west and south west.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal have been received from David and Sheila Moran, Kilbiller, Coolbawn. It is unclear where the appellants' property is located. The main points made can be summarised as follows:

- The use of the shed is 'residential and incidental to the use and enjoyment of the applicant's dwelling'. The shed is approx. 80 metres from the house and therefore not convenient as access is via the R493. The house site has sufficient area to accommodate a shed to service the house. It is not reasonable that the house and shed can be properly regarded as falling within one curtilage. The floor area is excessive when compared to the house (55sqm) and the necessity for the 4.1 metres height must also be questioned.
- The development contravenes Policy LH2 of the North Tipperary Development Plan which states that the visual impact of new development should be minimised by careful design and siting. Existing landscape features were not protected. The site was elevated, trees removed, and materials used have resulted in a development that is random, intrusive and unsympathetic to the character and landscape, which is a listed view, VO5, in the Plan.
- The development will contribute to the proliferation of such buildings as they are relatively cheap and easy to construct. Permitting this industrial style shed on a standalone site will set a precedent for steel clad sheds for residential use within curtilages contrary to Chapter 10.11.9 of the North Tipperary Development Plan.
- The original shed was derelict, and the site was not used for many years. The person who was active on site died in 2006. It was abandoned until the applicant cleared the site in 2018. Activities outlined in the further information response all pre-date 2006. The applicant should, therefore, have been required to seek permission as if a 'greenfield' site. The existence of the structure should not confer established rights of use to undertake the works that he has done as the site was abandoned.

- If it is necessary to demonstrate a housing need to facilitate individual houses in the open countryside, does it not follow that a need should be demonstrated for a standalone shed? This would normally only be granted to a person deemed intrinsic to the area.
- Minimum sightlines required are not attained. The entrance has been materially altered and widened; therefore it is only reasonable that minimum sightlines are achieved on this busy road. Policies SS5 and SS6 states it is policy to protect carrying capacity and traffic safety. The development has the potential to adversely affect carrying capacity and traffic safety. The site has potential for intensification of use and could be sold, rented or leased. There are already too many entrances on this stretch of the R493.
- An aerial photograph of the site prior to redevelopment has been submitted with the grounds of appeal and a USB which shows a video of the demolition of the shed.

6.2. Applicant Response

The main points made can be summarised as follows:

- The shed is neither excessive in size or height and occupies a much smaller footprint than the former structure on site as detailed on OSI mapping. The site is not suitable for any development other than a small building.
- The green shed blends in with the landscape and is well screened. It is set back from the road and is not prominent in the landscape. There is no view of it on the R493 until directly at the site. The removal of vegetation was to enable access and clearance into the site which had become overgrown. It was intended to plant some trees on the south east boundary though this has not proceeded while planning matters were ongoing.
- There is no precedent set by the decision. It sits on a site that already contained a steel clad shed as outlined in photos and video with the grounds of appeal.
- The shed was derelict prior to the applicant's ownership. Sites fall into disrepair and dereliction for many reasons, but rarely as an intent of abandonment. Once in ownership it was cleaned up. The lack of use or inability to use the site in

previous ownership is not a material consideration. It was not and cannot be considered a 'greenfield' site. The applicant was under the impression that as a shed existed on the site, no permission was required to construct a smaller replacement shed.

- The policy referred to in the appeal in relation to development in a primary amenity area relates to new residential development only. There is no requirement for local need policy to be proved.
- A developed site and entrance existed for many years. Work carried out has only improved the traffic safety by allowing an increased roadside set back and improving sightlines. It is not possible for all existing development to retrospectively comply with modern technical guidelines. Many adjoining entrances do not achieve modern sightline requirements and are not obliged to upgrade. It will not be an intensively used entrance. Sightlines achievable are between 81%-90% of the requirements in the County Development Plan. Increased sightlines would require major realignment works. The Areas Roads Engineer had no objection. Claims of further intensification are unfounded. Condition 2 clearly defines the current and future use of the site and shed.

6.3. Planning Authority Response

No observations to make.

6.4. Observations

None.

6.5. Further Responses

None sought.

7.0 Assessment

The main issues are those raised in the grounds of appeal and the Planning Reports 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:

- Principle of Development
- Visual Amenity
- Sightlines and Traffic Safety
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. The grounds of appeal set out a number of issues with the development including the fact that the shed is not within the curtilage of a house, it considers that the use of the original shed had been abandoned, and to permit the development would set an undesirable precedent.
- 7.1.2. It appears that the applicant owns the closer of the two single storey houses to the south of the site as set out in P.A. Reg. Ref. 20/235, and not the house further away as indicated on the Site Location Map submitted with the current planning application. The applicant's residential property and the site subject of the current application are separated by a narrow field entrance area. A shed that is incidental to the use and enjoyment of a house is normally contained within the curtilage of the house. The existing shed is not within the curtilage of the house. However, both properties are under the applicant's control. The applicant's response to the further information request stated that the original shed on site had been used for the storage of timber, turf, vehicles and a saw machine. The current use of the shed is stated as storage for a small boat with trailer and garden equipment.
- 7.1.3. It is not disputed that there was a shed structure in existence on this site for a considerable period prior to it falling into dereliction. Eventually it was removed, the site cleared, and the current structure was constructed. The grounds of appeal consider that the previous use of the site had been abandoned. To 'abandon' the use of something effectively means that the use is relinquished with the intent of never again resumed it. The applicant states that the shed was in a state of dereliction prior to his ownership and that sites fall into disrepair for many reasons, but rarely as an intent of abandonment. I do not consider that it is critical to the appropriate

consideration of the application to attempt to ascertain whether or not the previous use was abandoned. It is clear that the site was a brownfield site as it had previously been subject of development.

- 7.1.4. I do not consider that granting this planning application would set a precedent for the proliferation of such buildings on standalone sites. Each planning application is assessed on its own merits. In the circumstances as they relate to this particular application, I consider the development is acceptable on its merits in terms of the principle of development, subject to other detailed considerations.
- 7.1.5. Therefore, I do not consider that the fact that the shed is not within the curtilage of a house is a significant issue given the fact the site was a brownfield site, has previously been used for similar storage purposes and is under the ownership of the owner of the nearest house to the south. I consider the principle of the development is acceptable in this instance. An appropriate condition restricting the use of the structure should be attached to any grant of permission for retention.

7.2. Visual Amenity

- 7.2.1. The grounds of appeal consider that the floor area and height of the shed are excessive, the external cladding material is unsuitable, the site was raised, and trees removed. It is also considered that the development would not be consistent with Policy LH2 of the North Tipperary County Development Plan 2010 (as varied and extended) and would affect Listed View VO5 of the Plan.
- 7.2.2. The structure has a floor area of 52.33sqm, a height of 4.1 metres and it is externally finished in green cladding. I do not consider that the floor area and height are excessive for the purposes outlined. Chapter 10.11.9 (Domestic garages) of the Plan, as referenced in the grounds of appeal, states that detached garages should be less than 70sqm. The area of the original structure on site is given as 167.5sqm. I also consider that the external finish is typical of such structures in rural areas. The structure is set back into the site, approx. 25 metres from the public road. The site layout plans submitted with the application all show that the finished floor level of the shed is 85.0, the same as the level of the centre of the R493 to the front of the site. While it is possible that the original ground level on site was raised, I do not consider the site is an elevated site in the context of its immediate surroundings.

- 7.2.3. It appears that the site is located just inside a 'Primary Amenity Area' outlined in Figure 7.1 (Primary and Secondary Amenity Areas) of the Plan. Policy LH2 states that "It is the policy of the Council to ensure the protection of the visual amenity, landscape quality and character of designated Primary and Secondary Amenity Areas. Developments which would have an adverse material impact on the visual amenities of the area will not be permitted". A number of considerations are then set out in the policy e.g. the avoidance of visually prominent locations, integration with the landscape and compliance with development standards. Listed views are set out in Appendix 4 of the Plan and include, as Listed View V05, 'Views west of the R493 north of Puckane to Ballinderry'. The site is located within this area. Policy LH3 states "It is the policy of the Council to protect and enhance views identified in Appendix 4 Listed Views in Tipperary, and views to and from lakelands and waterways. The Council will not permit development which would obstruct or have a significant adverse impact on these views".
- 7.2.4. I do not consider that the development would be inconsistent with either Policy LH2 or Policy LH3. Policy LH2 protects the visual amenity, landscape quality and character of Primary Amenity Areas. The site is at the very edge of the Primary Amenity Area of which it is part. There are houses to both sides, a field to the rear and a wooded area further to the rear. It is a rural area, but I do not consider that the structure has a 'material' impact, as set out in the policy. It is relatively modest in scale, it is set back from the road and the green colour somewhat integrates with the landscape. There are trees along the north west boundary and the structure is only visible from a very limited area, effectively when viewed from the road in front of the site. I do not consider that the development would 'obstruct or have a significant adverse impact on the view' as set out in Policy LH3.
- 7.2.5. Therefore, I consider that the development would be acceptable in terms of its floor area, height and external finish and would not contravene Policies LH2 or LH3 of the North Tipperary County Development Plan 2010 (as varied and extended). The development would not comprise a visually obtrusive or incongruous feature on the landscape.

7.3. Sightlines and Traffic Safety

- 7.3.1. The grounds of appeal consider that minimum sightlines are not attained and, as the entrance has been altered and widened to facilitate increased entrance and egress, it is only reasonable that minimum sightlines are achieved. It is also considered that carrying capacity and traffic safety of the R493 is potentially affected contrary to Policies SS5 and SS6 of the North Tipperary County Development Plan 2010 (as varied and extended).
- 7.3.2. Policies SS5 and SS6 relate to Housing on Strategic Regional Roads (of which the R493 at this location is one) and Housing on National Secondary Roads, respectively. Neither policy is relevant to the application because the application is not for a housing application and the R493 is a Regional Road, not a National Secondary Road.
- 7.3.3. In relation to sightlines, Section 10.9.1 (Road Design and Safe Access) of the Plan states that “Adequate sight visibility at new entrances is vital to enable oncoming traffic to be seen when using the entrance and also to enable other road users to see traffic emerging from the entrance”. Table 10.1 identifies a 160 metres sightline requirement for Regional Roads. Further information was sought by the planning authority on the sightline issue. The ‘Sightlines Plan’ (Drawing No. A3_2971) submitted in response shows sightlines of 145 metres in a northerly direction and sightlines of 130 metres in a southerly direction. Therefore, the minimum sightlines required have not been achieved. Notwithstanding, it is accepted that there was an original vehicular access on site prior to the recent redevelopment of the site. The applicant’s response to the clarification of further information request states it pre-dates 1963. Though the access has been amended, it is contended that it did not result in the creation of a ‘new’ access and therefore current standards should not apply. The clarification response also considers the alteration results in more favourable sightlines than existed originally.
- 7.3.4. I consider that, as this is not a ‘new’ access, current standards need not apply. The sightlines that are achieved, while not the full 160 metres, are still reasonably long. I note that the District Engineer’s report to the Council stated that “With regards to roads the Nenagh Municipal District has no object to this application” (sic). P.A. Reg. Ref. 20/235 was an application for the retention of a new vehicular entrance, in close proximity to the south. The sightlines achieved from that entrance were 160 metres in a northerly direction but only 85.5 metres in a southerly direction, significantly less

than those achievable from the shed entrance. However, the new entrance was considered to result in a significant improvement in sightlines to the south.

- 7.3.5. I consider that the development, given its size and the condition that can be attached restricting its use, would have negligible impact on the carrying capacity of the road and would not result in any increased traffic safety concern.
- 7.3.6. Condition No. 2 of the planning authority decision states that the shed shall not be used for purposes including vehicles for the purposes of maintaining the domestic garden. The reason for this has not been elaborated on in the planning authority's Planning Report. However, it may be to avoid a situation where a vehicle such as a tractor lawnmower is used on the public road going from the shed to the garden. Notwithstanding the short distance between both, I consider it is a reasonable condition.
- 7.3.7. In conclusion, I consider that the sightlines achieved are acceptable, having regard to the former use of the site. I consider there would be negligible impact on the carrying capacity of the road and it would not result in any undue increased traffic hazard at this location.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, 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

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 provisions of the North Tipperary County Development Plan 2010, as extended and varied, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the development would be acceptable in terms of the visual amenities of the area and would be acceptable in terms of traffic safety. 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, as amended by the further plans and particulars submitted on the 30th day of June 2020 and the 14th day of September 2020 except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. The shed shall not be used for any residential, commercial or industrial purpose and shall not be utilised for vehicles for the purposes of maintaining a domestic garden.

Reason: In the interests of the amenity of property in the vicinity, traffic safety, and the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

10.03.2021

