



An
Bord
Pleanála

Inspector's Report ABP-310515-21

Development	Retention of a machinery storage shed with retaining wall and retaining wall to front of shed and all associated site works.
Location	Magheradrumman, Carndonagh, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2150568
Applicant	Mark McGonagle
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party
Appellants	Evelyn and Patrick Kelly
Observer(s)	None
Date of Site Inspection	23 rd September 2021
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The site which has a stated area of 0.16 ha is located in a rural area on the Inishowen peninsula in north Donegal. The nearest settlement Carndonagh is located c. 3.4km to the northwest of the subject site. The shed for which retention is sought has an area of c. 200sqm and is located to the immediate rear of an existing storey and a half dwelling house. Another dwelling house is located on the adjacent site to the north, all these properties appear to be under the same ownership. The dwelling to the immediate west of the subject site is located c. 1.5m below the current finished floor level (FFL) of the shed.
- 1.2. Two separate dwellings are located on the adjoining lands to east of the subject site, these are accessed via a narrow access road which branches off the local public road and runs along the eastern boundary of the subject site. These dwellings on the adjoining sites to the east are located at a considerably higher ground level than that of the subject shed, with the shed for which retention is sought cut into the existing hill at c. FFL 138.00m, with land sloping upwards to its rear (east) to a level of approx. 145.00m.
- 1.3. The subject shed is accessed via an existing entrance off the adjoining local road which runs along the southern boundary of the site. This entrance also provides access to the rear of the existing dwelling house to the front of the shed. A gravel drive branches off this access road and leads eastwards to the shed. The subject site is bound by wooden post and rail fencing to the front (west) and side (north) and set into the hill on the other sides, with partial fencing also along the roadside boundary. A 1.8m high retaining wall with fencing atop is located to the front (west of the site), below which is access to the rear of the adjacent dwelling house.
- 1.4. At time of site visit the shed housed farm machinery including a vintage tractor, a single car, trailers and tools. The surrounding area is rural in nature and predominantly in agricultural use, with land sloping downwards to the west.

2.0 Proposed Development

2.1. Permission is sought to retain the following:

- An existing machinery storage shed c. 200sqm in area with retaining wall, measuring c.11.86m in width and c.17.86m in length and of height c. 6 metres. The shed is comprised of a concrete base and sides and corrugated roof.
- Retaining wall of height c.1.8m to the front of the shed and all associated site works. The site is accessed via an existing entrance along the southern boundary.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Donegal County Council (DCC) issued a notification of decision to grant permission for the proposal in May 2021 subject to 5 no. conditions. Most notable are the following conditions:

- Condition no.2 limits use of the shed to that described in the application form and stipulates that the shed is not to be used for any other purpose be that business, commercial, residential or other, without a separate grant of planning permission, and also that machinery to be stored within the site shall only be machinery that is correctly associated with the restoration of vintage tractors and cars. This condition also limited the operation of plant machinery within the shed between 9am and 6pm Monday to Friday and 9am to 1pm on Saturdays and not at all on Sundays or bank holidays. This condition also included instructions regarding the visual appearance of the external curtilage of the shed and that no more than two vehicles are to be parked outside the front of the shed at any given time.
- Condition No.3 requires the submission of a full landscaping plan to the planning authority which is to include for safety parapet fencing atop the retaining wall.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer dated May 2021 reflects the decision of the Planning Authority. The Planning Officer notes the following in their report:

- The applicant states that the shed will be used for the purpose of facilitating a hobby of restoring vintage cars and tractors, there is a precedence of granting permission for such sheds in the county.
- The shed is not unduly close to or overbearing upon neighboring properties. It is not far removed from a typical agricultural shed style design and has a relatively low roof ridge.
- If appropriate landscaping is provided, its location within a cluster of buildings within this rural area is considered acceptable.
- It appears that the developer intends to form a separate access into the curtilage of the shed from the local public road fronting the site. Adequate vision lines are available and given the width of the public road is less than 4 meters in width it appears that new entrance is permissible at this location as exempted development. The applicant has included 'all associated site development works' within the description of the development being applied for, which would appear to include for this access.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

3.4.1. One third party submission was received which raised the following concerns:

- Subject shed is of a commercial scale and should not be considered ancillary to domestic use. It is noted that a live application on a nearby site for a

proposed domestic garage has been requested by DCC to be reduced in size down to a maximum of 80 square meters. The current proposal under appeal therefore would not be consistent.

- The site is detrimental to local residential amenity and has devalued local property.
- The shed was built without planning permission and thus is unauthorised development.
- It appears that there is an intention to create a new separate entrance from the local road.
- The house on the adjoining land under the control of the applicant is unoccupied.

4.0 Planning History

4.1. Subject site:

- P.A. Ref. 01/4512 – Outline permission granted in October 2001 for dwelling house and septic tank.
- P.A. Ref. 03/4420 – Permission granted in June 2003 for storey and a half dwelling house and septic tank.

4.2. Enforcement proceedings on subject site:

- P.A. Ref. UD20/256 – DCC issued a Section 152 warning letter to the persons considered to be responsible for the unauthorised development.

4.3. Adjacent sites to east:

- P.A. Ref. 13/51548 – Permission granted in March 2014 for construction of domestic garage and polytunnel at side of existing house.
- P.A. Ref. 05/4615 – Permission granted in July 2005 for 1 no. dwelling and 1 no. septic tank.
- P.A. Ref. 02/5387 – Permission granted in February 2003 for 2 no. one and a half storey dwellings and septic tanks.

Please note: The appellants make reference to P.A. Ref. 03/71377, which they state relates to the erection of a one and half storey dwelling with septic tank (granted 5/06/2003). However, having examined the planning history of the site I can see no reference to such a planning application number. I believe the appellants were mistaken in their reference and instead meant to highlight P.A. Ref. 03/4420 which has the same grant date and is referenced above for the subject site.

5.0 Policy Context

5.1. Development Plan

5.1.1. The site is governed by the policies and provisions contained in the Donegal County Development Plan 2018 – 2024. The subject site is located within an area designated as a 'Stronger Rural Area' under the plan and is not governed by any land use zoning designation. The site is located within an area designated as Moderate Scenic Amenity within the plan.

5.1.2. The following sections and policies listed in the development plan are of relevance:

- Policy NH-P-7: states that within areas of 'High Scenic Amenity' (HSA) and 'Moderate Scenic Amenity' (MSA) as identified on Map 7.1.1: 'Scenic Amenity', and subject to the other objectives and policies of this Plan, it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.
- Policy NH-P-9: states that it is the policy of the Council to manage the local landscape and natural environment, including the seascape, by ensuring any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of the area.
- Policy NH-P-13: states that it is a policy of the Council to protect, conserve and manage landscapes having regard to the nature of the proposed development and the degree to which it can be accommodated into the receiving landscape. In this regard the proposal must be considered in the context of the landscape classifications, and views and prospects contained within this Plan and as illustrated on Map 7.1.1: 'Scenic Amenity'.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within or adjacent to a Natura 2000 site. There are a number of Natura 2000 sites in this area of Donegal. The closest Magheradrumman Bog Special Area of Conservation (SAC) (Site code: 000618) is located c. 1.1km to the site's southeast and the Carndonagh Wood SAC (Site code:001098) is located c. 4.3km to the site's northwest. The Magheradrumman Bog proposed Natural Heritage Area (pNHA) is also located close by (c. 1 1km to the south east).

5.3. EIA Screening

- 5.3.1. The subject appeal does not relate to a class of development which requires mandatory EIA. Schedule 5 Part 2 of the Planning and Development (P&D) Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required. The proposed development is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA.
- 5.3.2. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.
- 5.3.3. Having regard to: (a) the nature and scale of the development, and (b) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended), It is concluded 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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third-party appeal against the decision of the planning authority to grant planning permission was submitted by Evelyn and Patrick Kelly, who reside in the dwelling house on the adjoining site to the east. The issues raised in the appeal are similar to those submitted to the planning authority at planning application stage and can be summarised as follows:

- The appellants raise issue with the planning officer's response to their concerns, in particular they state that the intended use of the shed is questionable. The applicant's agent stated in the letter submitted with the application that the shed is 'for domestic use only' and the appellants argue that if it is for domestic use then this use should be ancillary to the use and enjoyment of the parent dwelling. The letter from the agent then goes on to state that the applicant restores cars and tractors etc. as a hobby, yet the appellants state that the newspaper notice does not specifically seek planning retention for a development that involves restoration works.
- The roof line of the shed is above the existing ground level along the approach lane to the appellants' home and is visually prominent from their house.
- On the basis of other applications submitted in the area (DCC Ref. 21/50149 and 16/50207) it would appear that the planners considered that 80 square meters should be the approximate area of a domestic shed. The shed under consideration for retention is 30% larger than this.
- By the above logic there would be no requirement to seek prior planning permission as one could be advantaged by constructing the shed first and then applying for retention at a later stage. This advantage to the applicant would appear to be of greater importance than the disadvantaged impact on the local residents and neighbours.
- The appellants highlight that the subject site excludes the existing dwelling to the west, which they consider strange given the comments of the agent who

states that 'this is for domestic use only'. In addition, contrary to what the area planner states in their report, the existing dwelling house is unoccupied

- Policies RH-P-1 and RH-P-2 are highlighted and Appendix 4 of part B of the County Development Plan 2018-2024. Appendix 4 relating to the design states 'annex buildings and garages should be subordinate and sited to complement the main building'. The current shed is imposing, with a higher ridge level than the parent dwelling, with a strident gable facing the rear yard of same dwelling.
- The appellants have submitted photographic evidence indicating two entrances on site, one for the dwelling house and one for the shed. The area planner should have considered the application being presented for assessment as it exists and in this case there was no mention of a new access in the planning notice or development description. The further assumption by the area planner that adequate vision lines were available in a new location, in the absence of any evidence to support this, should have been queried by requesting further information from the applicant.
- The appellants make reference to P.A. Ref. 03/71377 which they state refers to the house to the immediate west. They state that condition no.2 of this grant of permission 'precludes residential activity along with other activities therefore not ancillary to the dwelling'. They consider that no account of the impact on the residential amenity of this existing dwelling was contemplated in the planner's assessment.
- Condition no.2 of the decision to grant could easily be read as conditions for a business opening hours. The appellants would have considered that a hobby is an extracurricular activity, carried out after work time and during time off. This condition therefore effectively precludes the applicant from carrying out any activities at a time when the applicant is available to do them.
- Condition no. 2(a) precludes the use for residential purposes.

6.2. Applicant Response

- None received.

6.3. Planning Authority Response

6.3.1. The Planning Authority response to the grounds of appeal can be summarised as follows:

- It is common practice for DCC to grant permission for large sheds in the countryside in association with domestic dwellings where a vintage car or tractor hobby is claimed.
- The use of the shed was tied down by Condition no. 2(a) of the decision to grant.
- The planning authority are satisfied to rely on the comments of the initial planner's report. It should be noted that no report was returned from the Council's Area Roads Executive Engineer.
- It is common practice for planning officers to refer to the statements made by the first party agent in an application as a statement made by the applicant.
- It is considered that the photographs of the shed submitted by the appellants demonstrate that the shed is acceptable in appearance and is not unduly out of place visually.
- The fact that a development is unauthorised is not considered to be a factor that should influence the determination of a planning application for permission to retain said unauthorised development.
- The two other planning applications referenced by the appellants relate to developments where no justification was given for the proposed size of those subject proposed sheds. In the case of the subject application, it had been stated why a shed of the size constructed was needed.
- During site inspection on 7th April 2021 the planning officer was approached by a young girl who stated that her father was in the house if any discussion was required, therefore the planning officer assumed the house was occupied.

6.4. Observations

- None received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, following an inspection of the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Proposed Use and Amenity Considerations
- Visual Impact
- Access
- Appropriate Assessment – Screening

7.2. Proposed Use and Amenity Considerations

7.2.1. The third-party appellants raise issue with the intended use of the shed which they believe is questionable. In their submission they highlight that the applicant's agent's submission refers to the shed being used for 'domestic use only', however they raise concerns regarding the scale of same shed which they consider is commercial in nature. While I note that the area planner did indeed agree that the shed is of a commercial scale, they noted that the intended use of the shed is for the restoration of vintage cars and tractors as a hobby. They also noted that there is a well-established precedent for these types of sheds for such uses in the county.

7.2.2. I note the agent's cover letter submitted as part of the planning application outlines that the applicant restores tractors and cars as a hobby and that he intends to use the shed for this purpose, as well as the storage of machinery. Following an inspection of the site I can confirm that at that time there was a vintage tractor, car and other machinery located in the shed. The applicant's agent has stated that the shed is not intended for commercial purposes and I can confirm that no evidence of commercial activity was noted on site during my inspection.

7.2.3. The submitted site location map shows the landholding boundary extends to include the dwelling house to the northwest and the immediate west. The shed is within 9

metres of the rear elevation of the adjacent dwelling house to the west. The appellants contest same house is vacant and while I did not encounter anyone on site during my visit, I note that the area planner states that they had during their site visit. In any case the occupation of the dwelling does not form a material consideration in relation to the current assessment.

- 7.2.4. The shed for which retention is sought measures 200sqm and while I acknowledge that this is a larger than average shed for the purposes of domestic use, I do not consider it inappropriate at the current location. While it would not appear to be in current use for commercial activity, I do however acknowledge that it is sometimes difficult from a visual inspection to draw a line between a commercial enterprise and a hobby by a vintage car/tractor enthusiast, therefore it is necessary that any permission granted be clear and be capable of enforcement and it is necessary that clarity be provided in relation to the nature of the activity which would be considered acceptable in this rural area. I consider that the appropriate option for the Board is to grant permission but to impose a strict condition limiting the use of the shed to that of machinery storage and the restoration of cars and tractors as a hobby and that no commercial activity be permitted on site. In addition, while I note that the planning authority had limited the hours of activity on site from 9am to 6pm Monday to Friday and 9am to 1pm on Saturdays, and not at all on Sundays or Bank Holidays, I consider this inappropriate for a 'hobby' activity or machinery storage. As highlighted by the appellants - 'hobby' activities by their nature usually take place outside of normal working hours, therefore I would suggest that a condition limiting operating hours associated with the use on site would be more appropriately applied to include times from 0800hrs to 2200hrs every day. This would allow for activities after normal working hours, while also ensuring that any concerns in relation to noise impacts from activities in the shed on nearby residential properties are mitigated.

7.3. **Visual Impact**

- 7.3.1. The site is located within an area designated as Moderate Scenic Amenity (MSA) within the operative County Development Plan (as identified on Map 7.1.1). Policy NH-P-7 states that within these areas it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape. The existing machinery shed at a finished floor level (FFL) of 138.00 is located cut into

the hillside to the rear (east). The adjacent house has a FFL of 136.51 and therefore the constructed shed's FFL is at a level c.1.5m higher. A retaining wall of height c. 1.8m is located approximately 7m to the rear of the existing dwelling house. This retaining wall has timber post and rail fencing atop, with the existing shed located c. 2 m back (east) of this. While the pitched roof height of the shed extends to c. 6 metres, given its orientation and separation distance from the house to the west, at c. 9 metres and also the fact that the shed is set into the rising landscape, with the hill to the rear rising to the east, in my opinion the shed is not adversely overbearing on the house to the west, and I consider its position in the wider landscape acceptable.

7.3.2. The dwellings located to the immediate east of the shed are located at a higher FFL and while the roof ridge of the shed will be visible from the dwellings, it will not be of such a height as to cause any significant visual impact or obstruction and therefore I would not consider its prominence (as raised by the appellants) any concern. While the shed will be visible from the adjoining public road, this will only be evident when approaching from the west, as when coming downhill from an easterly direction the OD of the road at 40.55 is at a level just below shed roof ridge height. In my opinion the development is acceptable in terms of its scale and design.

7.3.3. The planning authority have attached a condition which states that no waste, scrap metal, building materials, vehicular parts, metals or disused vehicles associated with the restoration hobby shall be stored within the external curtilage of the shed and also that the site shall be maintained in a clean and tidy condition at all times. I consider these conditions appropriate to ensure that the shed, and the activities permitted, do not cause any negative visual impact. The planning authority also attached a condition which required a full landscaping plan and details of safety parapet fencing required (to placed at the top of all sheer drops above 1.2m), again I consider this acceptable and appropriate.

7.4. **Access**

7.4.1. According to the submitted site layout plan access to the shed is to be gained via an existing entrance off the local road, located on the southern boundary of the site. This existing entrance also provides access to the existing dwelling house located to the shed's immediate west.

7.4.2. The appellants raised concerns in relation to the access, which they state is in fact a new entrance which was not included as part of the development description. While the site layout plan indicates the use of the existing entrance, on site visit I noted that the existing site entrance was not clearly delineated. While the south eastern corner of the site is partly confined by virtue of the embankment which exists along this boundary, (given the cut into the hill), and part of the southern boundary also has an existing timber post and rail fencing located along it, the western end adjacent to the current entrance remains open and undefined. The appellants submitted photographs with their appeal which show that at the time of submission no such timber post and rail fencing existed in this area and that this area was in fact open to the adjoining public roadway. As I have stated, this previous open area now appears to be cordoned off with fencing. It would not appear from the submitted plans that the applicant intends to open a new entrance onto the roadway and instead seeks to share the existing entrance point with the dwelling house. Having examined the existing entrance, adequate vision lines are evident in both directions, however I do note that vision lines in both directions are limited to c. 50m as opposed to the 70m indicated in writing by the applicant on the submitted site layout. In any case, given the open nature of the site boundaries, I would not consider that any added vehicular movements associated with the machinery storage shed and the hobby activity involved would create any additional risk to road safety. The lack of clearly delineated boundary treatments on the submitted plans however is a concern. If the Board are minded to grant permission, I would suggest that a condition is attached requiring the erection of an appropriate boundary treatment along the southern boundary and that access to the site is restricted to that of the existing entrance.

7.5. **Appropriate Assessment – Screening**

7.5.1. The proposal is for the retention of an existing machinery shed within the applicant's landholding. The site is located within an existing cluster of buildings and is not situated within any European site. The nearest Natura 2000 site is the Magheradrumman Bog Special area of Conservation (SAC) which is located c. 1.1km southeast and upland of the site and I am not aware of any source/pathway/receptor routes between this site and the subject development site. The aforementioned Natura site is designated for Northern Atlantic wet heaths with *Erica tetralix* [4010] and Blanket bogs (* if active bog) [7130] and no mobile species

are listed as qualifying interests. Accordingly, no Appropriate Assessment issues would arise. Having regard to the nature, scale, and location of the proposal, the nature of the receiving environment, and proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposal would not 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 should be granted, subject to conditions, as set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature and scale of the development for which retention is sought and the pattern of development in the area, it is considered, subject to compliance with the conditions set out below, that the development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would constitute an acceptable use at this location. Therefore, the proposed development would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development for which retention is sought shall be retained and completed 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 and the development shall be completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The use of the shed shall be limited to domestic use only, which may include for activities associated with the restoration of cars and tractors for hobby purposes and machinery storage purposes. The following shall apply in relation to any activity within the shed:

- (a) the use shall not be commercial or for profit,
- (b) there shall be no activity undertaken outside of the hours of 0800 and 2200 Monday to Sunday inclusive, and
- (c) No waste, scrap metal, building materials, vehicle parts, metals or disused vehicles associated with the restoration hobby shall be stored within the external curtilage of the shed.
- (d) The site shall be maintained in a clean and tidy condition at all times.

Reason: To ensure that the use of the building provides for activities appropriate to a rural area.

3. Access to the site shall be via the existing entrance on the southern boundary. No additional access points shall be permitted without prior approval from the planning authority.

Reason: In the interest of traffic safety.

4. A comprehensive boundary/entrance treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority. This scheme shall include the following: -

- (a) details of boundary/entrance treatments along the southern boundary of the site adjoining the public road, including heights, materials and finishes; and
- (b) Details of boundary treatments and landscaping measures for the remainder of the site and the area to the north west of the shed including the retaining wall.

Upon receipt of written agreement from the planning authority the applicant shall fully implement the approved details within 6 months unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity and traffic safety.

5. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works. Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

Máire Daly
Planning Inspector

16th January 2022