



An  
Bord  
Pleanála

## Inspector's Report ABP-311178-21

<b>Development</b>	Retention of 3 detached sheds in the side/rear garden with ancillary site works.
<b>Location</b>	Kalyn House, Beaulieu, Drogheda, Co Louth
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	21170
<b>Applicant</b>	John Lynch
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Grant Retention
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	P. McSweeney
<b>Date of Site Inspection</b>	3 <sup>rd</sup> November 2021
<b>Inspector</b>	Dolores McCague

## **1.0 Site Location and Description**

- 1.1.1. The site is located at Beaulieu, Drogheda, Co Louth. This is a rural area with a considerable amount of single houses. Beaulieu Cross is to the north; Drogheda is to the west and south.
- 1.1.2. The site is occupied by a large two-storey detached house. To the west there is a single house on an adjoining site, to the north there is a single house, set behind other houses, which gains access from the road to the east.
- 1.1.3. The existing house is given as 355m<sup>2</sup>.
- 1.1.4. The site is given as 0.5ha.

## **2.0 Proposed Development**

- 2.1.1. The proposed development is the retention of 3 detached sheds in the side/rear garden, with ancillary site works. The sheds, which are located to the side and rear of the dwelling, are close to the boundary with the adjoining site to the west.
- 2.1.2. The sheds for retention total 164m<sup>2</sup> in floor area: shed 1- 68m<sup>2</sup>, shed 2- 49m<sup>2</sup> and shed 3- 47m<sup>2</sup>. Sheds 1 and 2 have walls comprised of metal cladding and low-profile metal roofing and are set on concrete slab bases; shed 3 is of masonry construction with a parapet wall concealing a flat roof.
- 2.1.3. The application states that the sheds will only be used for purposes incidental to the enjoyment of the house and are/will not be used for human habitation, commercial or industrial use.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The planning authority decided to grant retention subject to 3 conditions, including:
  - 2) The three detached shed buildings hereby granted planning permission shall be used for purposes incidental to the enjoyment of the dwellinghouse on site and for no other purposes including any commercial purpose.

Reason: To safeguard the amenities of the area and in the interests of the proper planning and development of the area.

3) Within three months of the date of this grant of permission, the applicant shall submit design details and calculations for a soakpit(s) to cater for surface water ..

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

There are two planning reports on the file. The first recommending further information includes:

- Shed 1 – portal frame structure, metal cladding height c3.9m, used to store games associated with gaming arcades.
- Shed 2 – portal frame structure, metal cladding height c3.7m, used to store tools and miscellaneous items associated with rear garden.
- Shed 3 – brick and plaster finish, flat roof height c2.8m, accommodates a vintage car and miscellaneous items associated with a household.
- EIA screened out.
- AA – there is a watercourse 80m to the north and north east, no apparent link to the site. The applicant has indicated that surface water is disposed of to the same soakaway as the house. No details submitted. Clarity required and in relation to the use of the structures.
- Recommending FI on 3 items: 1 – use, and with reference to RD4 (rural based enterprises); 2 - surface water; 3 - if use is other than for purposes incidental to the enjoyment of the dwellinghouse it must be re-advertised.

### **3.3. Third Party Observations**

- 3.3.1. A third party observation was made by Stephen Ward, planning consultant, on behalf of Mr P. McSweeney whose home abuts the application site to the north, and Mr S Kelly whose home abuts the site to the east.

The statement in the cover letter that the sheds were built in 2011, 2006 and 2015 is incorrect. There were all built in the last 7 years as can be seen from Google earth

images 2013. The sheds are used for commercial purposes and are not used incidental to the enjoyment of the dwelling house. They are 6.5 times the threshold for exempted domestic sheds.

The applicant felled mature trees on the property boundary and placed the shed abutting the boundary. Activities include noise drilling, angle grinders, hammering, people shouting and traffic and operation of machines at night; which have a severe negative impact on residential amenities.

The public notices should state that the sheds are for commercial use. Per Article 18(1)9d)(ii) the notice should state the period for which retention is sought. The application form is inaccurate and misleading in stating the period of time the sheds have been in place.

The incorrect fee has been paid. A commercial fee of €2.50per sq m is appropriate.

An Appropriate Assessment screening report should have been submitted. The implications vis a vis retention are obvious.

The zoning of this area is for a greenbelt. Even as a set of domestic garages it is a material contravention.

Policy SS61 is not complied with – the design is not coherent and the form not appropriate, the structures are not sited to reduce visual impact, visually subservient to the dwelling, or used for purposes incidental to the dwelling.

They do not comply with RD3 to RD6 regarding rural resource based employment.

The roller shutter doors are commercial characteristics.

By their nature, designing and positioning, they are having severe negative impact on normal residential amenities.

Traffic hazard.

Pollution from structures and uses that do not have the benefit of planning permission and environmental controls.

### **3.4. Further Planning Report**

- 3.4.1. The second planning report states that it has been confirmed that the sheds are now and shall be used for purposes incidental to the enjoyment of the dwellinghouse and not for habitation, commercial or industrial purposes.
- 3.4.2. The use of drills, angle grinders etc were associated with renovation and improvement works to the dwelling 2 years ago.
- 3.4.3. Site was re-inspected and slot machines have been removed. The contents of the sheds are incidental to the enjoyment of the dwellinghouse.
- 3.4.4. It is stated that surface water is piped to a ditch along the western boundary.
- 3.4.5. It must be ensured that all surface water is disposed of within the site; to be conditioned.
- 3.4.6. AA – it is not considered likely to affect a protected site.

### **4.0 Planning History**

97/460 permission for a dwelling.

98/249 permission for a conservatory to a dwelling.

### **5.0 Policy Context**

#### **5.1. Development Plan**

- 5.1.1. The Lough County Development Plan 2021-2027 is the operative plan (the plan referred to in the third party appeal has been superseded). Relevant provisions include:

5.19.3 Rural Enterprises Rural businesses and enterprises are an important source of local employment in the County. This includes agricultural, equine, engineering/manufacturing, recreational, tourism, energy/renewable energy, and rural resource based enterprises.

13.13.12 Home Based Economic Activity - proposals for home based economic activities, in urban and rural areas, will be considered on a case-by-case basis.

These activities shall be ancillary to the primary use of the property as residential accommodation.

Paragraphs 13.8.37 and 13.9.10 refer to garages and outbuildings.

13.8.37 Domestic Garages and Outbuildings - the purpose of garages and outbuildings within the curtilage of residential properties is normally for storage and needs that are incidental to the dwelling on site. Whilst there has been an increasing demand for larger garages, it is important that any garage is proportionate to the existing property so that it will integrate into the local environment. Garages will normally be positioned to the side or rear of the dwelling and will be designed and finished in materials that match the dwelling. The uses of garages will be strictly controlled to uses incidental to the residential property. The Planning Authority will not normally grant planning permission for a garage or outbuilding of a design or scale that is not in proportion or in keeping with the existing dwelling. Any application for such a development would require a clear rationale setting out the reasons for the development, the intended use of the garage/building, and how it would integrate into the local environment. These applications will be assessed on a case-by-case basis.

13.9.10 Garages and Outbuildings - the purpose of garages and outbuildings within the curtilage of residential properties is normally for storage and needs that are incidental to the dwelling on site. Garages will normally be positioned to the side or rear of the dwelling and will be designed and finished in materials that match the dwelling. The design and scale of any garage shall be proportionate to the dwelling. Outbuildings that will have a use incidental to the dwelling will be considered on a case-by-case basis and will be dependent on the location, the nature of the use and the design and scale of the building.

## **5.2. Natural Heritage Designations**

- 5.2.1. The nearest protected sites are Boyne Coast and Estuary SAC (site code 001957) and Boyne Estuary SPA (site code 004080), both c 1.25km straight line distance from the subject site.

### **5.3. EIA Screening**

- 5.3.1. The proposed development is not of any type included in Schedule 5 of the Planning and Development Regulations 2001 (as amended), i.e. development for which mandatory EIA is required nor is it integral to any project that is of a type included in Schedule 5. Having regard to the characteristics of the development and the characteristics of the location, there is no real likelihood of significant effects on the environment arising from the 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 to grant permission was made by Stephen Ward Planning Consultant, on behalf of Mr P. McSweeney and Mr S Kelly. Mr Kelly's appeal has since been withdrawn.
- 6.1.2. The grounds include:
- Mr McSweeney's home abuts the application site to the north-east.
  - There is no justification for sheds of this floor area for purposes incidental to the enjoyment of the domestic dwellinghouse.
  - The sheds are used for commercial purposes and the noise and vibration, and traffic to the site, at all hours have impacted on the neighbouring properties.
  - By their nature, design and positioning, they are having severe negative impact on normal residential amenities.
  - The activity is of concern as a traffic hazard.
  - They should be assessed as if they were not there. They could not be considered as being for domestic purposes.
  - The proposal would fall, assessed against either the previous or current development plan. It is contrary to Development Control Zone 4.

- It is in material contravention to 2.19.16 and Policy SS61 which sets out criteria against which domestic garages are to be assessed. The development fails all 6 criteria.
- Question 12 on the application form states that the existing buildings are 355sqm and the work to be retained 164sqm. This means that the house has a floor area of 191 sq m and the sheds are 86% of the floor area of the house. They cannot be considered ancillary or subservient.
- Significant impacts on River Boyne SAC/ SPA cannot be ruled out. Condition no. 3 requires submission of information to determine the type of surface water system to be installed. Information was not available at the time of decision and an assessment could not be made. An AA screening should have been submitted and a NIS if necessary.
- The application should have been invalidated. The public notices should state the use of the sheds. An incorrect planning fee was paid.
- An Appropriate Assessment screening report should have been submitted. The site is within 5km of the River Boyne, a Natura site.
- The conditioned use of the sheds is not what they were built for.

- 6.1.3. The statement in the cover letter that the sheds were built in 2011, 2006 and 2015 is incorrect. There were all built in the last 7 years as can be seen from Google earth images 2013, (copy of image provided).
- 6.1.4. The sheds are used for commercial purposes and are not used incidental to the enjoyment of the dwelling house. They are 6.5 times the threshold for exempted domestic sheds.
- 6.1.5. The applicant felled mature trees on the property boundary and placed the shed abutting the boundary.
- 6.1.6. Activities include noise drilling, angle grinders, hammering, people shouting, and traffic and operation of machines at night; which have a severe negative impact on residential amenities.
- 6.1.7. In the initial response to the further information request, it would seem that the commercial use of the sheds was confirmed.



- 6.1.8. The formal response removes any reference to commercial use. It is not possible to justify the buildings on the basis of the use stated.
- 6.1.9. The site visit by the planning officer was a snapshot in time and cannot determine that the sheds are for domestic use. The only way to ensure compliance is to refuse permission and carry out enforcement.
- 6.1.10. Per Article 18(1)9d)(ii) the notice should state the nature of proposed use and where appropriate the period for which retention is sought.
- 6.1.11. The public notice is inaccurate and misleading. The cover letter is inaccurate and misleading in stating the period of time the sheds have been in place.
- 6.1.12. The incorrect fee has been paid, the fee of €2.50per sq m. A commercial fee of 10.80per sq m is appropriate.
- 6.1.13. Re. Appropriate Assessment and proximity to the River Boyne, Natura site, in the absence of information to allow objective scientific assessment the Board cannot permit the development.
- 6.1.14. The zoning of this area is for a greenbelt. Even as a set of domestic garages, it is a material contravention.
- 6.1.15. Citing RD 37- to permit limited development and RD 38 - that large scale industrial and commercial developments, or other developments of similar scale or nature, would not be considered appropriate within this zone; and 2.19.16 - criteria for garages.
- 6.1.16. The sheds have commercial characteristics two with roller shutter doors.
- 6.1.17. The reason for the placement of the sheds is to provide a 5m wide roadway to access them at the other side of the house.
- 6.1.18. Condition no. 2 is not enforceable. It is unlikely that the planning authority will undertake inspections regularly unannounced, or late in the evening.
- 6.1.19. Letters from the two individual appellants are attached to the grounds.

## **6.2. Applicant Response**

6.2.1. Stephen Mason, Architectural and Planning Services, has responded, on behalf of the applicant, to the grounds of appeal. The response includes:

- The sheds are domestic in scale and positioned c 13-25m from the appellants property.
- The appellant, Mr McSweeney, agreed that shed 3 should have a flat roof.
- The appellant Mr McSweeney, has sheds to the rear of his house c 80sq m.
- The sheds have not previously and will never be used for human habitation, commercial or industrial use.
- The existing house is 355m<sup>2</sup>, the sheds are 164m<sup>2</sup> – 46% of the area of the house. They are ancillary and subservient. They represent c9% site coverage.
- Re surface water, the applicant will comply with the condition.
- The site notices are accurate and clearly state the use.
- The application documents are accurate and not misleading.
- Shed 1 was built in 2011 – c10 years ago. Shed 2 was built in 2006 – c15 years ago. Shed 3 was built in 2015 – c6 years ago.
- A storm caused the trees to fall and not any construction works.
- The activities causing noise were addressed at further information stage; and are repeated in the response.
- The construction – lightweight frame and non-insulated cladding – little security or thermal value – is not what would be expected from a commercial premises. The type of door is standard.
- The applicant agrees that this is a residential area, but refers to various commercial operations within 100m.
- Photographs and a letter from the applicant are attached to the response.

## **6.3. Planning Authority Response**

6.3.1. The Planning Authority has responded to the grounds of appeal including:

- On inspection 15<sup>th</sup> July 2021 the planning authority was satisfied that all three sheds were being used for domestic purposes.
- The sheds do not have an undue visual impact.
- On 29<sup>th</sup> March shed 1 was used for the storage of amusement game machine. Inspection 15<sup>th</sup> July 2021 confirmed this unauthorised use had discontinued. Therefore the PA did not consider that there was disamenity by reason of noise, traffic or activity or that there is a traffic hazard at the entrance. Condition 2 is enforceable.
- Re SS61 – given the scale, position and context, the sheds are subservient to the dwelling.
- The runoff is unlikely to impact a European site. Condition no. 3 pertains to SuDS requirements.

#### **6.4. Further Correspondence**

- 6.4.1. An e-mail from Mr Kelly, via a letter from Mr Ward, was received 30/09/2021, stating that he wished to withdraw his appeal.

### **7.0 Assessment**

- 7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, the principle of the development, the scale / use of the sheds and other issues and the following assessment is dealt with under those headings.

#### **7.2. Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development, and the estuarine nature of the nearest protected sites I am satisfied that 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.

### **7.3. Principle of Development**

- 7.3.1. The site is occupied by an existing dwelling. It is stated that the proposed retention of the sheds will be for purposes incidental to the enjoyment of the house and they are/will not be used for human habitation, commercial or industrial use.
- 7.3.2. The proposed development is acceptable in principle.

### **7.4. Scale and Use of the Sheds**

- 7.4.1. The scale and use of the sheds is raised in the grounds of appeal. It is stated that because of their size they are not subservient to the dwelling. This concept would mainly relate to the bulk of a building. In the case of these three sheds, they are low profile, single storey structures located to the side and rear of the dwelling such that they have very little visibility outside the site. They are clearly subservient to the dwelling.
- 7.4.2. The issue of use was raised in a further information request, notwithstanding the declared use in the application details. It has been clarified that the current and proposed use is for purposes incidental to the enjoyment of the house. Any other use would be unauthorised.
- 7.4.3. The appellant questions whether the planning authority will be carrying out inspections late in the evening or at weekends to ensure compliance and considers that the only way to ensure compliance is to refuse permission and carry out enforcement. Ensuring compliance is a similar issue for the planning authority as it would be the case of any other permission granted.
- 7.4.4. The design, and in particular the use of roller shutter doors, has been raised as an indicator that the proposed use is not for domestic purposes. The applicant in response points out that these doors are standard and that the construction materials are not suited to a commercial development. I agree with this assessment.
- 7.4.5. This issue of enforcing compliance with the permission or the possibility of departure from the permitted use should not be a reason to refuse or modify the development.

## **7.5. Other Issues**

- 7.5.1. Surface water is raised in the grounds of appeal. It is stated that the use of a condition to 3 requires submission of information to determine the type of surface water system to be installed. Since the information was not available at the time of decision an assessment of impact could not be made and significant impacts on River Boyne SAC/ SPA cannot be ruled out. The planning authority have responded to the grounds stating that runoff is unlikely to impact a European site and that condition no. 3 pertains to SuDS requirements.
- 7.5.2. The subject site is approx. 1.25km straight line distance from the Boyne Coast and Estuary SAC (site code 001957) and Boyne Estuary SPA (site code 004080); both are estuarine sites. The additional runoff from the proposed development is clean water from the roof areas. Even if the runoff was not attenuated, as required by condition, it would not impact on the protected sites.
- 7.5.3. The grounds of appeal states that the application should have been invalidated due to the application fee and published notices. The period of proposed retention is indefinite which can be inferred from the notices; these are not temporary structures. The use, being domestic, means the correct fee has been paid.

## **8.0 Recommendation**

- 8.1.1. In accordance with the foregoing I recommend that permission should be granted, for the following reasons and considerations and in accordance with the following conditions.

## **9.0 Reasons and Considerations**

The sheds proposed for retention are within the curtilage of an existing dwelling, where their siting, low profile and the existing vegetation on the site, screen them from public view and their proposed use, for purposes incidental to the enjoyment of the house, would accord with the Louth County Development Plan, would not injure the amenities of the area, and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1	<p>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 1<sup>st</sup> day of July 2021, 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2	<p>Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.</p> <p>Within three months of the date of this grant of permission, the applicant shall submit for the written agreement of the planning authority, design details and calculations for soakpits to cater for all surface water arising.</p> <p><b>Reason:</b> In the interest of public health.</p>

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Planning Inspector

17<sup>th</sup> December 2021

### Appendices

Appendix 1: photographs

Appendix 2 Lough County Development Plan 2021-2027, extracts