



An
Bord
Pleanála

Inspector's Report

ABP-311275-21

Development	Retention permission for existing prefabricated domestic storage outbuilding as laid out and constructed.
Location	Red Roof Cottage, Baltray, County Louth.
Planning Authority	Louth County Council.
Planning Authority Reg. Ref.	21758.
Applicant(s)	Shannon MacKenna.
Type of Application	Retention Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party.
Appellant(s)	Kevin Beirth.
Observer(s)	None.
Date of Site Inspection	22 nd day of October, 2021.
Inspector	Patricia-Marie Young.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	4
3.4. Third Party Observations	4
4.0 Planning History.....	4
5.0 Policy & Context	4
5.1. Development Plan.....	4
5.2. Natural Heritage Designations	5
5.3. EIA Screening	5
6.0 The Appeal	5
6.1. Grounds of Appeal	5
6.2. Planning Authority Response	6
7.0 Assessment	7
8.0 Recommendation.....	10
9.0 Reasons and Considerations.....	10
10.0 Conditions	10

1.0 Site Location and Description

- 1.1. This appeal site has a stated 0.014ha and it is located in the modest in size coastal settlement of Baltray, c1km to the south of Termonfeckin and c6.8km to the north east of the centre of Drogheda, in County Louth. The site contains a single storey vernacular cottage (Red Roof Cottage) whose principal façade at its nearest point is setback c20m from the L63272. This building occupies a backland site with it being located to the rear of a 2-storey public house building (19th Bar). The site also contains an existing prefabricated domestic storage building. This building is located between its principal façade and the rear of the public house building. The site is bound by residential properties to the west, north and north east. Access to the site is via a small laneway that runs along the western side of the public house building and another small laneway that runs along the northern side of the car park that lies to the immediate east of the public house building. The site setting could be described as a village centre with the predominant land use being residential in nature.

2.0 Proposed Development

- 2.1. By way of this application retention permission is sought for an existing prefabricated domestic storage outbuilding as laid out and as constructed. According to the accompanying planning application form this structure has a gross floor space of 2.9m². In addition, the accompanying drawings indicate that this structure has a 2.5m ridge height, it is finished in timber cladding and has a gable shaped built form.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 6th day of August, 2021, the Planning Authority decided to grant retention permission for the development set out under Section 2.1 above subject to two conditions.
- 3.1.2. Of note Condition No. 2 restricts the use of this structure to purposes incidental to the enjoyment of the dwelling house.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officers report dated the 3rd day of August, 2021, is the basis of the Planning Authority's decision. This report considered that the retention of permission of the modest in size, height and scale prefabricated shed was consistent permissible developments on residentially zoned land. It notes that the issue raised in relation to the structure's location on a right of way is a civil matter.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. The Planning Authority during the course of their determination of this application received one Third Party Observation. This was submitted by the Appellant in this appeal case and raises the same substantive concerns as are set out in their appeal submission to the Board. These are summarised under Section 6.1 of this report below.

4.0 Planning History

4.1. Relevant Planning History Site and Setting

4.1.1. None.

5.0 Policy & Context

5.1. Development Plan

5.1.1. The Louth County Development Plan, 2021-2027, came into effect on the 11th day of November, 2021.

- 5.1.2. Volume 2 of the Development Plan deals with Small Towns and Villages within the plan area with Section 7 dealing with Baltray.
- 5.1.3. The site is on land zoned 'A1 – Existing Residential'.
- 5.1.4. Section 13.21.5 of the Development Plan sets out the land use objective for such lands as follows: “*to protect and enhance the amenity and character of existing residential communities*”. In addition, it sets out in the accompanying guidance that this zoning seeks to conserve and enhance the quality and character of established residential communities and protect their amenities.

5.2. Natural Heritage Designations

- 5.2.1. This appeal site does not form part of a Natura 2000 site, nor does it adjoin such a site. However, it is located in close proximity to:
- Boyne Estuary SPA (Site Code:004080).
 - Boyne Coast & Estuary SAC (Site Code: 001957)

These two Natura 2000 sites are located at the nearest point c90m to the south of the site. In addition, these Natura site's overlap at this location with proposed pNHA: Boyne Coast & Estuary

5.3. EIA Screening

- 5.3.1. Having regard to the modest nature, scale, and extent of the development for which retention is sought under this application, the residential zoning of the site and its setting, the serviced land and nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. I consider that 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. The grounds of this Third-Party Appeal can be summarised as follows:

- This development has blocked a right of way to the front of the property that has been established for over 100 years.
- This vehicle access route is effective for fire fighting operations who should be able to get within easy reach of any buildings.
- The site boundary is not correctly depicted in the submitted drawings.
- This structure is not in keeping with the character of the surrounding area.
- This structure impacts on the current business of the appellant's public house.

6.2. Planning Authority Response

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

- The Board is referred to the Planning Officer's report on this application.
- The submitted drawings demarcate the shed structure as being within the boundaries of the application site.
- The documentation as submitted are compliant with the Planning & Development Regulations, 2001, as amended.
- This development does not impact upon the activities of the adjoining public house, nor does it impede or prevent emergency personnel from attending any incidents in the immediate locality.
- Suitable pedestrian access along the eastern boundary of the site is still maintained with both vehicular and pedestrian access provided via a short laneway to the western side of the public house to the south.
- In order to protect the amenities of the area Condition No. 2 was attached to the grant of permission to ensure that the shed is only used for purposes incidental to the enjoyment of the dwelling house and not for any other use.
- The finish of the shed is typical of a garden domestic shed and gives rise to no adverse visual amenity impact.
- The Board is requested to uphold its decision.

7.0 Assessment

7.1. Overview

7.1.1. From my reading of the file, inspection of the site and its setting, having had regard to all relevant policy provisions, I conclude that the key issues relevant to this appeal case before the Board are:

- Civil & Procedural Matters
- The Principle of the Proposed Development
- Overall Design and Layout / Visual Impact
- Impact on Adjacent Property

7.1.2. The matter of 'Appropriate Assessment' also requires examination. The above issues are assessed in turn below.

7.2. Civil & Procedural Matters

7.2.1. The Third-Party Appellant in this appeal case contends that the shed structure for which retention is sought under this application has been constructed on land that is subject to a public right of way. At the location which it has been constructed it would obstruct emergency service vehicles in an adverse event.

7.2.2. I consider that the Board has no statutory power to adjudicate upon matters relating to title and ownership of property as is raised in the grounds of appeal. These matters constitute civil matters that can only be resolved by agreement between the parties or in the civil courts.

7.2.3. On this point I note that 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.....*'.

7.2.4. I also do not consider that the information provided by the appellant in support of this is sufficiently robust to demonstrate the *bone fides* of the Contract for Sale that the First Party entered into in their purchase of the dwelling, land associated with it and the presence or not of a public right of way. The documentation submitted with this

application indicate that the applicant is the landowner for the land and buildings within the redline area as indicated in the Site Layout Plan (Note Drawing No. 02A-1391).

- 7.2.5. In these circumstances I concur with the Planning Authority that this application for retention permission appears to relate to a valid application made in accordance with the requirements of the Planning & Development Regulations, 2001. And subject to the attachment of an advisory note that sets out the provisions of Section 34(13) of the Planning & Development Act, 2000, as amended, as well as deals with any oversailing of adjoining properties as a precaution, I consider that the appeal before the Board relates to a valid planning application and that disputes in respect to rights over land are ultimately matters for resolution by the courts.

7.3. The Principle of the Proposed Development

- 7.3.1. On the basis that the development sought under this application is intended for ancillary and incidental use by occupants of what is a long established dwelling house located on land that is zoned under the Development Plan for residential use (Note: A1: Existing Residential), I am of the opinion that the retention of this modest domestic single storey shed structure which has a given maximum height of 2.5m, a stated gross floor space of 2.9m and is a gable shaped built form finished in timber cladding with one small window opening, is a type of development that is consistent with developments deemed to be permissible on residentially zoned land. This is despite it being sited to the front of the subject dwelling which arguably has a site context that could be as a backland site given that it is situated immediately behind a public house.

7.4. Overall Design and Layout/Visual Impact

- 7.4.1. The subject prefabricated domestic storage outbuilding is as said above modest in its overall built form, height, and size. Its appearance and finishes are typical of domestic sheds. At its backland location and forming part of a collection of various buildings including a 2-storey public house whose original structure has been extended in part by way of part single storey and part 2-storey rear additions with storage of various items to the rear I am satisfied that this shed structure can be accommodated at this location without causing any significant visual intrusion on its setting, in particular as viewed from the public domain of the L63272 and Colliers Lane. I therefore concur with the Planning Authority in terms of this development not giving rise to any significant adverse visual amenity injury on its setting.

7.5. Impact on Adjacent Property

- 7.5.1. The site is located on land where the zoning objective seeks to protect and enhance the amenity as well as character of the existing residential communities. And as previously discussed the development for which retention is sought under this application is a type that is generally deemed to be permissible subject to safeguards and is one that is of modest built form, height and overall mass with its use being ancillary to a modest in size and limited in open space to the front and rear vernacular cottage. It is also reversible and moveable in its nature and construction with a limited life span in terms of its envelope of materials.
- 7.5.2. Due to its modest built form and the backland siting relative to a public house which also limits views of it from the public domain it does not in my considered opinion give rise to any diminishment of amenity of properties in its vicinity by way of overlooking, overshadowing, visual overbearance or any other type of nuisance.
- 7.5.3. I therefore concur with the Planning Authority that the development for which retention is sought under this application, if permitted, would not give rise to any serious injury to its adjoining residential properties or the appellants adjoining public house. Further the appellant has not substantiated any adverse impact that the subject shed structure would give rise to in terms of the operations of their business, the use of their property through to that it would give rise to any depreciation of their properties value.

7.6. Appropriate Assessment

- 7.6.1. The site does not form part of a Natura 2000 site, it lies within an established village context that is fully serviced, the development is *in situ* having required no substantive ground works and the structure is a modest in size, scale, and extent domestic shed. Accordingly, no Appropriate Assessment issues arise. Having regard to the nature and scale of the development sought under this application and to the nature of the receiving environment, namely a brown field and fully serviced location, no appropriate assessment issues arise, and it is not considered that the development proposed under this application would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.7. Other Matters Arising

- 7.7.1. **Flooding:** The site is located in an area that is located on 'Flood Zone A' lands as identified by Development Plan Map No. 4.2. I note that Policy Objective BAL 11 is relevant. It states that the Council will seek: *"to avoid land uses or development identified as 'highly vulnerable development' in Table 3.1 of 'The Planning System and Flood Risk Management Guidelines (2009)' on lands at risk of flooding and where development in floodplains cannot be avoided, take a sequential approach to flood risk management based on avoidance, reduction and adaptation to the risk"*. Given that this is a modest domestic shed structure I concur with the Planning Authority in this case that if permitted it would give rise to no substantive flooding concerns.

8.0 Recommendation

- 8.1. I recommend that retention permission be **granted**.

9.0 Reasons and Considerations

- 9.1. Having regard to the modest nature, scale, and extent of the domestic shed structure, its ancillary nature to an established dwelling located on residentially zoned lane and subject to compliance with conditions, the development sought under this application for retention would be satisfactory in the context of the visual amenities of the area and it is a type of development that would not give rise to any serious injury to properties in its vicinity. The development sought under this application would, therefore, be satisfactory in the context of 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 17th day of June, 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.

Reason: In the interest of clarity.

2. The domestic storage outbuilding shall be solely for purposes incidental to the enjoyment of the dwelling house and shall not be used for other type of residential use, industrial, business and/or commercial purposes.

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

Advisory Note:

1. The applicant is advised of Section 34(13) of the Planning and Development Act, 2000, as amended that “a person shall not be entitled solely by reason of a permission or approval under this section to carry out a development”.
2. A grant of planning permission does not entitle the applicant to construct a development that would oversail, overhang or otherwise physically impinge upon an adjoining property without the permission of the adjoining property owner.

Patricia-Marie Young

Planning Inspector

15th day of December, 2021.