



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311328-21

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<b>Development</b>	Retain extensions/ alteration to house and shed and all associated works.
<b>Location</b>	Donore, Caragh, Naas, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	21429
<b>Applicant(s)</b>	Adrian Fox
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Tom Morrin
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	31 <sup>st</sup> of March 2022
<b>Inspector</b>	Karen Hamilton

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## 1.0 Site Location and Description

1.1. The subject site is located in the rural area, north of Naas, Donore, Carragh, Co. Kildare. The site is c. 440m northwest of Mondello Park and to the northwest of Carragh Village. The site contains a two-storey dwelling and large shed and is accessed from the main road along a long private lane. The land around the site is in agricultural use. There is a significant number of mature trees and planting within the site.

## 2.0 Proposed Development

2.1. The proposed development would comprise of the following:

- Retention of alterations to a dwelling (porch, 2 no. ground floor extensions and side double doors) and;
- Retention of a shed (88.5m<sup>2</sup>).

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to grant permission subject to 6 no conditions of which the following are of note:

C2 -The existing dwelling and extensions shall be jointly occupied as a single housing unit. The extension shall not be subdivided from the remainder of the dwelling and sold nor let as a separate dwelling unit.

C3 -The shed shall be used for domestic purposes only and shall remain ancillary to the dwelling. The shed shall not be used for human habitation, for any commercial use or carrying out of any trade. The shed shall not be let or sold separately to the dwelling.

C5- The line of sight shall be in accordance with Transport Infrastructure Ireland document DN-GEO-03060 and Existing Entrance Sightlines Drawings No 001 received by the Planning Authority on the 16<sup>th</sup> of July 2021.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission. The report of the area planner noted the location of the dwelling was not in the same place as originally permitted under Reg Ref 92/476. The overall design and layout of the extension was considered to be acceptable. The retention of the shed was also considered acceptable having regard to the use for domestic purposes and its location surrounded by mature trees.

The report of the area planner noted the 3<sup>rd</sup> party submission in relation to the ownership of the dwelling and did not consider this a planning matter, making reference to Section 34 (13) of the Planning & Development Act, 2000 (as amended).

A summary of the further information request and the applicant's response is summarised below:

#### Further Information Request

1. Location of the dwelling as permitted under Reg Ref 92/476.
2. Compliance with conditions no. 7 and no. 8 of permission Reg Ref 92/476.
3. Restriction of sightlines by hedgerows and compliance with the 2.4m setback and 150m visibility splay.
4. Site layout map illustrating tree and hedgerow removal from the visibility splays.
5. Submission of a Site characterisation form, site suitability report and certification from a competent person for the wastewater treatment system.
6. Submission of a site layout plan to indicate the exact location of any septic tanks/wastewater treatment systems and wells on or adjoining the site and the location of streams etc.

## Applicants Response

1. Drwg No 21-071-001 shows the existing house and the house granted under Reg Ref 92/474. The original house was granted off the original location although has not increased in floorspace over the extensions.
2. The house was only purchased recently, the original owner did not have consent for the previous set back at the entrance. The neighbour has since agreed to the carrying out of works (Condition No.7). In relation to Condition No. 8 the existing boundary fence has since been removed and the existing ditch and new mature ditches behind the sightlines
3. A site survey Drwg 21-071-001 shows the existing sightlines with the works carried out to comply with condition No. 7 and 8. The sightlines of 2.4m by 150m can be achieved.
4. As per above Drwg 21-071-001 shows compliance with condition no. 7 & 8 of Reg Ref 92/474.
5. The septic tank and distribution box was inspected. As the house is in a different position to the original permission, so is the septic tank and percolation area. The septic tank has been constructed as per the Code of Practice in effect on the 07<sup>th</sup> of June 2019.
6. Drwgs 21-072-001 and 21-072-002 show the septic tank, wells etc.

Following the submission of the further information both the Environment Section and the Roads, Transportation and Public Safety Dept recommended a grant of permission subject to conditions.

The report of the area planner noted the further information and considered the proposed development was acceptable, subject to conditions.

### 3.2.2. Other Technical Reports

Environment Section: No objection subject to conditions, following the submission of further information.

Roads, Transportation and Public Safety Dept: No objection subject to conditions, following the submission of further information.

District Area Office, Maynooth: No objection to proposed development.

### 3.3. **Prescribed Bodies**

Irish Water: No objection subject to conditions (where the applicant intends to connect to the public water/ wastewater).

### 3.4. **Third Party Observations**

Two observations were submitted to the PA from the same third party (the appellant) in relation to the ownership of the site and dwelling. The report of the area planner notes both submissions from the same person. The issues raised in both submissions are summarised as follows:

- Mr Fox is not the owner of the property.
- Folios submitted with the observation show Thomas & Aileen Morrin as the full owners.
- Mr Fox does not have permission to apply for retention.
- There are a number of court cases outstanding regarding this property.
- Land Registry folios submitted to indicate ongoing land disputes.
- The location of the dwelling is not the same as permitted and is unauthorised.
- The proposed applicant should qualify under the rural housing criteria for a rural dwelling.

## 4.0 **Planning History**

### **Reg Ref 92/476**

Permission granted for Mr T Morrin for the original dwelling, entrance and septic tank.

## 5.0 Policy Context

### 5.1. Kildare County Development Plan 2017-2023

The site is located in Rural Housing Policy Zone 1 where the applicant for a one-off dwelling must have a genuine local need and comply with the relevant category in either Table 4.3 (a) or Table 4.3 (b).

Section 4.12: Housing in Rural Areas

Section 17.4.5: General requirements for layout of new dwellings

### 5.2. Natural Heritage Designations

The site is located c. 400m to the south of the Grand Canal p NHA (site code 002104) and c. 3.1km to the south of Ballynafagh Bog SAC (site code 000391) and Ballynafagh Bog p NHA and c. 5.3km to the northeast of Mouds Bog SAC and p NHA (site code 002331).

### 5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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

The grounds of appeal are submitted by Mr Tom Morris of Donore, Naas in relation to the retention of the works and the issues raised are summarised below:

- The planning application should have been made invalid as the dwelling is not located in the position it was originally granted for.
- The revised application should seek retention for the entire development.

- The entire development is unlawful from a planning perspective.
- The applicant has not qualified under the rural housing criteria for a rural dwelling.
- Map illustrating the location of dwelling as per Reg Ref 92/476 and showing the difference of location.

## 6.2. Applicant Response

A response from an agent, on behalf of the applicant, has been received in relation to the grounds of appeal and the issues raised are summarised below:

### 6.2.1. Background

- A summary of the site history, description of the subject site and surrounding area and a description of the local planning policy in the 2017 development plan is provided.

### 6.2.2. Third party appeal

- The Board should invalidate the third-party appeal.
- The points raised in the appeal statement are completely unrelated to the development being considered.

### 6.2.3. Invalidation after appeal

- The Board has previously invalidated a third party appeal (e.g. PL09.203310) as it was not located in a certain area. An additional appeal (PL09.213245) was refused as the appeal only related to compliance with conditions on a previous permission.
- S 138 (1) of the Planning and Development Act, 2000 allows the Board to dismiss an appeal or referral.
- Reference is provided to Simmons Planning Law, whereas the Boards right to dismiss an appeal is detailed.

### 6.2.4. Location of the original dwelling.

- The location of the original dwelling is an enforcement related observation (non-compliance).



- A High Court ruling (*Feeney J. Murphy v An Bord Pleanala*) held that there was no obligation on ABP to determine if the ground floor structure was unauthorised when granting permission for the first-floor structure.
- Simmons Planning Law book refers to the case *Murphy v An Bord Pleanala*, and states the Board is not obliged to make such enquiry on an unauthorised development.

#### 6.2.5. Local Needs Policy

- The provisions governing the identity of new rural housing applicants do not apply in this case.
- It is not open to the Board to require the applicant to satisfy the stipulations of the rural housing policy in the county development plan.
- PL09.243498 the Board did not consider the proposed development to be retained should be assessed under the rural housing policy of the development plan.

#### 6.2.6. Oral Hearing

- The Board may hold an Oral Hearing (S 134 (a) (1) of the Planning and Development Act, where they require further consideration before making any such determination.

### 6.3. **Planning Authority Response (PA)**

The PA submitted a response to the grounds of appeal to state that the details in the third-party submission are noted and were addressed in the original planning application. The PA has no further comments to make and respectfully requests that the Board uphold the decision to grant permission.

### 6.4. **Observations**

None Received.

## 7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Validity of the Ground of Appeal
- Principle of Development
- Location of the Existing Dwelling
- Local Needs Assessment
- Appropriate Assessment.

### **Validity of the Ground of Appeal**

7.2. The proposed development relates to the retention of works to an existing one-off dwelling (extension and alterations) and the retention of a large shed (for the purposes of residential use). The grounds of appeal are submitted from a resident of the surrounding area in relation to the proposed development. The two main issues raised in the grounds of appeal relate to the location of the main dwelling, (which the appellant states have not been built in compliance with the original grant of permission (Reg Ref 92/479)), and the applicant's failure to be able to meet the local needs criteria for rural housing in County Kildare.

7.3. The applicant's response notes the information contained in the grounds of appeal and does not consider they relate to any matters in the proposed development, i.e., the retention of the shed and alterations to the dwelling. They consider the Board should invalidate the grounds of appeal as the matter of appeal is unrelated to the development considered. They note the appellant being the applicant of the original dwelling on the site and the previous owner.

7.4. I note the further information request by the PA required the applicant to submit additional information relating to the original location of the dwelling, sightlines and wastewater treatment. I consider these are planning matters and information the PA could reasonably be expected to request during the determination of an application. The appellant originally made submissions on the location of the dwelling, in addition to the ownership of the site and the local needs requirement.

7.5. Having regard to the applicant's involvement in the planning application process, the further information request by the PA and the issues raised in the grounds of appeal,

namely the grant of retention permission, it is my opinion that the grounds of appeal may be considered as a valid submission. I have discussed the issues raised in further detail below.

### **Principle of Development**

- 7.6. The proposed development relates to the retention of alterations to the dwelling permitted under Reg Ref 92/476 and the retention of a large shed within the subject site. These alterations include two modest ground floor extensions, a porch and the reconfiguration of some doors and windows. No issue was raised by either the PA or the appellant in relation to the retention of the works to the dwelling or the shed. In addition, the proposed works have not been raised in the grounds of appeal.
- 7.7. Whilst the Board may consider the proposal *de novo*, I note the location and setting of the dwelling (surrounded by mature trees) on a large rural plot, and I consider the proposed development can be assimilated satisfactorily into the subject site. In this regard, I consider the scale of proposed development (retention of the alterations to the dwelling and shed) at this location is acceptable in principle. Should the Board consider a grant of permission is warranted, a condition restricting the use of the shed for residential, similar to the PA condition, is considered reasonable.

### **Location of the Existing Dwelling**

- 7.8. The grounds of appeal have raised concern in relation to the location of the existing dwelling, which they consider is not in the same location as previously granted under Reg Ref 92/476. In light of the new location, the appellant considers the grant of permission is unlawful.
- 7.9. The PA requested further information in relation to the location of the existing dwelling in comparison to the dwelling permitted under the parent permission Reg Ref 92/476. The applicant's response to the further information included a drawing illustrating the house in comparison to the original permission. The PA noted the location c. 9m northeast to the permitted location and considered the location was acceptable and did not alter the character of the site or amenities of any adjacent properties.
- 7.10. I note the further information was not advertised as significant additional information, nor was the development description changed to include the new location of the

dwelling. In this regard, whilst the PA have considered this location within the assessment of the proposed development, I do not consider the proposed development relates to the retention of any new location of the dwelling. This aside, the Board will note my assessment above in relation to the principle of development and it is my opinion that principle of the proposed works and the retention of the alterations and shed is acceptable.

- 7.11. To this end, I do not consider any query raised in the grounds of appeal in relation to the location of the dwelling precludes the Board from assessing the proposed development. It is my opinion that this is a matter for PA to address as non-compliance of a previous permission.

### **Local Needs Assessment**

- 7.12. As stated above, the proposed development relates to the retention of works to an existing dwelling. The grounds of appeal consider the applicant is required to comply with the rural housing criteria.
- 7.13. In the first instance, I note Condition No 9 of the original permission (Reg Ref 92/476) stated "*When completed the dwelling shall be first occupied as a place of permanent residence by the applicant and/or members of his immediate family*". It is my opinion, from the documentation submitted in relation to the site ownership that the appellants first occupied the dwelling as a permanent place of residence. Condition No 9 does not include any time restrictions for this residence and specifically states "shall be first occupied". It is my opinion that the dwelling was first occupied by the applicant of Reg Ref 92/476 and therefore Condition No 9 was complied in full. The Board will note not further restrictions on the occupation of the dwelling. In this regard I do not consider the original application restricted the occupation after first occupation.
- 7.14. In the second instance, I note the policies and objectives of the Kildare County Development Plan 2017-2023 in relation to the rural housing policy. The site is located in Rural Housing Policy Zone 1. Table 4.3 (a) or Table 4.3 (b) of the development plan requires the applicant to prove local need where they are applying for a new one-off dwelling. The Board will note the proposal relates to the retention of works to an existing dwelling. Therefore, it is my opinion that the applicant is not required to submit evidence of local needs.

7.15. Having regard to the proposal which relates to the retention of alterations to an existing dwelling and a shed, I do not consider the applicant is required to comply with the policies and objectives of the development plan in relation to the rural housing policy.

### Appropriate Assessment

7.16. The site is located c. 3.1km to the south of Ballynafagh Bog SAC (site code 000391) and c. 5.3km to the northeast of Mouds Bog SAC (site code 002331).

European Site	Qualifying Interest	Conservation Objectives
Mouds Bog SAC (site code 002331).	Active raised bogs [7110]  Degraded raised bogs still capable of natural regeneration [7120]  Depressions on peat substrates of the Rhynchosporion [7150]	To maintain or restore the favourable conservation condition of the habitats as Special Conservation Interests for this SAC
Ballynafagh Bog SAC (site code 000391)	Active raised bogs [7110]  Degraded raised bogs still capable of natural regeneration [7120]  Depressions on peat substrates of the Rhynchosporion [7150]	To maintain or restore the favourable conservation condition of the habitats as Special Conservation Interests for this SAC

I note the site is located c. 3km from the closest SAC and there are no hydrological connections between the site and either Ballynafagh Bog SAC or Mouds Bog SAC. The applicant states that the wastewater treatment system has been installed in compliance with best practice guidance. Having regard to the nature and scale of the proposed development, the information on the file and the nature of the receiving environment, no appropriate assessment issues arise. It is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European Site.

## 8.0 Recommendation

8.1. I recommend a **grant** of planning permission for the reasons and considerations and subject to the conditions set out below

## 9.0 Reasons and Considerations

9.1. The proposed development comprises of the retention of alterations to an existing dwelling and retention of a shed. Having regard to the existing permitted dwelling on the site, the overall design of the extensions to the dwelling and the shed, the characteristics of the site, the surrounding area, subject to compliance with the conditions set out below it is considered that the proposed development will not seriously injure the visual or residential amenity of the area or of property in vicinity and will otherwise accord with the provisions of the County Development Plan. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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.  <b>Reason:</b> In the interest of clarity
2.	The shed shall be used for purposes of residential use connected with the main dwelling.  <b>Reason:</b> To protect residential amenity.

3.	Details of the entrance shall be in accordance with the Existing Entrance Sightlines Drawings No 001 received by the Planning Authority on the 16 <sup>th</sup> of July 2021.  Reason: In the interest of traffic safety
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Karen Hamilton  
Senior Planning Inspector

04<sup>th</sup> of April 2021