



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312784-22

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<b>Development</b>	Single storey domestic storage shed.
<b>Location</b>	379 Killeighter, Kilcock, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	211164
<b>Applicant(s)</b>	Piotr Milejczyk.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party against Grant of Permission
<b>Appellant(s)</b>	Rachel and Michael O'Connor.
<b>Observer(s)</b>	David and Amanda Molloy.
<b>Date of Site Inspection</b>	7 <sup>th</sup> September 2022.
<b>Inspector</b>	Enda Duignan

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## **1.0 Site Location and Description**

- 1.1. The appeal site is located within the townland of Killeighter, midway between the settlements of Kilcock and Enfield. The site is located on the northern side of the R148, c. 300m to the west of the junction of the R148 and the L5027. The site has a stated area of c. 0.29ha. and comprises a semi-detached single storey dwelling. The site is served by a vehicular entrance which is located at the western end of the site's frontage. Two single storey outbuildings are located to the rear of the dwelling. The remainder of the site is substantially cleared from vegetation and is extensively covered in a combination of paving, concrete, gravel and tarmac. The front boundary of the site comprises a c. 2.3m high palisade type fence, behind which are a row of mature trees.
  
- 1.2. In terms of the site surrounds, single storey dwellings are located to the west and east of the appeal site. The lands to the north and to the south on the opposite side of the R148 are in agricultural use.

## **2.0 Proposed Development**

- 2.1. The proposed development sought planning permission for the construction of what is described as a metal domestic storage shed which is located within the north-eastern corner of the site. The shed had a stated floor area of c. 120sq.m. and is to be located to the side and rear of the existing dwelling. The shed initially measured c. 15m long, 8m deep and had a height of c. 4.45m.
  
- 2.2. Following concerns raised by the Planning Authority with respect to the scale of the proposed domestic shed in their report dated 1<sup>st</sup> October 2022, the Applicant modified the proposal by reducing its height to c. 4.05m and the overall floor area to c. 90q.m.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority granted planning permission for the proposed development subject to a total of 10 no. standard conditions. Relevant conditions included:

**Condition No. 1:**

The development shall be carried out in accordance with documentation and particulars received by the Planning Authority on 12/08/2021 and on 22/12/2021 except where altered or amended by conditions in this permission.

Reason: To enable the Planning Authority to check the proposed development when completed, by reference to approved particulars.

**Condition No. 3:**

The storage shed hereby permitted shall be used for domestic purposes only and shall remain ancillary to the dwelling. It shall not be used for human habitation, for any commercial use or for the carrying out of any trade. The structure shall not be let or sold separately to the dwelling:

Reason: In the interests of clarity and to regulate the use of the development in the interest of the proper planning and sustainable development of the area.

**3.2. Planning Authority Reports****3.2.1. Planning Reports**

The Kildare County Council Planning Reports form the basis of the decision to grant planning permission. The first Planning Report provides a description of the site and the subject proposal, it sets out the planning history of the site and summarises the issues raised by the third-party observations on file.

It is indicated within the report that the site is identified as being located within a rural area and therefore the policies included within Chapter Nos. 16 (Rural Design) and 17 (Development Management Standards) of the Kildare County Development Plan, 2017-2023 shall apply to the assessment of the application. The Planning Authority in their assessment of the application queried the nature of the proposed use and raised concerns with respect to its overall scale given its stated domestic use. Further information was therefore requested by the Planning Authority and also required applicant to submit details with respect to surface water disposal for the proposal.

The second Planning Report provides an assessment of the applicant's additional information response which provided clarity on the nature of the intended use and

included modifications to the design of the proposed structure (i.e reduction in height and floor area). On the basis of the information submitted by the Applicant, the Planning Authority deemed the proposal to be acceptable subject to compliance with standard conditions.

### 3.2.2. Other Technical Reports

Area Engineer: Report received requiring further information.

Water Services: Report received stating no objection subject to conditions.

Roads Section: Report received stating no objection subject to conditions.

### 3.3. Prescribed Bodies

Irish Water: Report received stating no objection subject to conditions.

### 3.4. Third Party Observations

Three no. third-party observations were received from:

- Pat Beirne.
- Rachel O'Connor (Third Party Appellant).
- David Molloy.

A summary of the matters raised in the observations are included as follows:

- The proposal is not in keeping with the residential character of the surrounds.
- The site is located on a busy road and there are concerns with respect to the nature of current use on site which represents a traffic hazard.
- Concerns with respect to the unauthorised commercial use of the appeal site including the installation of a portable toilet.
- Noise related impacts associated with the current commercial use on site.
- Environmental impacts associated with the current commercial use on site.
- Drainage related concerns associated with the current site conditions and the proposed development.

## 4.0 Planning History

**211163 (ABP-311815-21):** Planning permission refused by the Planning Authority and refused by the Board for the retention of a metal vehicle entrance gate to front perimeter of the site and the retention of the metal fencing at the front, side and rear perimeter of the site. The proposal also include the removal of the metal façade on the vehicle entrance gate at the front perimeter and the removal of the metal façade on the fencing to the front perimeter of the site, to be replaced with a composite wood façade. All together with associated site works. The application was refused for the following 1 no. reason:

1. Having regard to the location of the site of the development proposed for retention and completion within a rural area, where Policy RH17 under Section 4.13.2 of the Kildare County Development Plan 2017-2023 requires that the design of entrance gateways and associated roadside boundary should be in keeping with its rural setting, it is considered that the development proposed for retention, resulting in a type of entrance and roadside boundary that would be normally associated with an industrial/commercial development, would be contrary with this policy and would constitute an incongruous feature in this rural area adjacent to established residential properties. The development proposed for retention and proposals for its completion would seriously injure the visual and residential amenities of this rural area and would, therefore, be contrary to the proper planning and sustainable development of the area.

**062668:** Planning permission granted for the construction of a single storey extension to the side and rear of a bungalow and to retain a single storey storage outbuilding to the rear.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. As noted, the site located within a rural area of the county Kildare. Relevant policies contained within the Kildare County Development Plan (CDP), 2017-2023 are set out under the Rural Design standards (Chapter 16) and the Development Management Standards (Chapter 17). Although the policies do not provide specific guidance with

respect to design parameters for sheds or outbuildings, policies are included for the design of extensions in rural areas which is considered to be generally applicable to the development proposal.

5.1.2. Proposals for the development of one-off new small-scale enterprises in rural areas outside of designated employment centres will be assessed against the following criteria:

- The proposed development shall be located on the site of a redundant farm building / yard or similar agricultural brownfield site;
- There is a social and economic benefit to being located in a rural area;
- The proposal will not adversely affect the character and appearance of the landscape; and
- The development will not be detrimental to the amenity of nearby properties, and in particular the amenities of nearby residents.

## **5.2. Natural Heritage Designations**

5.2.1. The subject site is not located within or adjacent to any designated European Site. The nearest such site is the River Boyne and River Blackwater Special Area of Conservation (002299), which is situated approx. 11.1km to the north west of the site at its closest point.

5.2.2. The Royal Canal pNHA, Site Code 002103, lies approximately 600m to the north of the site.

## **5.3. EIA Screening**

5.3.1. Having regard to the nature and scale the development, which consists of the construction of a domestic shed in a rural 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.

## **5.4. Grounds of Appeal**

5.4.1. The grounds of appeal are submitted by Rachel and Michael O'Connor (third-party appellant). A summary of the issues raised area included as follow:

- An unauthorised car sales business is being operated from the appeal side. It is argued that the proposed shed will likely be used for commercial purposes.
- The site already has 2 domestic sheds. However, one is being currently used as a dwelling. There is also a metal portacabin on the site and a portable toilet has been installed.
- The proposal is not in keeping with the residential character of the site's immediate surrounds.
- Concerns that the unauthorised use has not been properly investigated by the Local Authority nor has a thorough inspection of the site been undertaken.
- There are discrepancies on the submitted drawings with respect to the site boundaries it is advised that they are currently proceeding with a legal case to resolve boundary issues with the owner(s) of the appeal site, stated as Trodamer Limited.
- The proposal represents a traffic hazard.
- The owner does not reside in the property and has tenants living in the house and in the existing shed.
- If the development goes ahead and is used as a car business, they are likely health risks associated with living so close to a working garage, such as a fire hazard and waste disposal. This is particularly relevant given the appellant utilises a private well.

5.4.2. Included within the appeal submission are Land Registry details and various photographs of the appeal site.

## **5.5. Planning Authority Response**

5.5.1. In response to the First Party appeal, the Planning Authority note that they have no further comments or observations to make. The Board is referred to the Planning Authority's Planning Reports and the reports of the various technical departments referred to during the assessment of the application.



## **5.6. Observations**

5.6.1. One (1) no. observation was received from David and Amanda Molloy of Killeighter, Kilcock, Co. Kildare. A summary of the issues raised include:

- It is noted that the site is located in a rural residential area with family homes on either side of the property and no permission has been granted for change of use from private residential to commercial on the appeal site.
- It is contended that the entrance is not suitable for multiple large or small vehicles entering or exiting the premises on this busy road.
- References unauthorised activity on the appeal site.
- There are significant environmental concerns about the auto-related business purported to being carried out on the site in relation to oil spills, noise, and surface water run-off.
- There is a legacy of unauthorised development on the appeal site from the previous owner.
- The proposal will negatively impact the amenity of the surrounding area.
- Permission should be refused for this commercial development.

## **5.7. Further Responses**

None.

## **6.0 Assessment**

6.1. The main issues are those raised in the Planning Report and the Appellant's grounds for appeal. Overall, I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Proposed Use
- Design & Visual Impact
- Residential Amenity
- Drainage
- Appropriate Assessment

## **6.2. Proposed Use**

- 6.2.1. I note the commentary contained within the third party appeal and by the observer regarding allegations of possible unauthorised use(s) on the site and the various documentary evidence that had been submitted in support of this claim. From undertaking my inspection of the appeal site, it would appear that there may be an unauthorised commercial use being carried out on site. However, the proposed development under this appeal relates solely to the construction of a domestic shed (i.e. for the storage of vintage cars) as outlined in the submitted documentation. Consequently, an assessment on existing or proposed uses on the appeal site has not been carried out herein.
- 6.2.2. The Planning Authority attached a condition to the grant of permission which restricted the use of the storage shed to domestic purposes only and so that it shall remain ancillary to the dwelling on site. The condition also stipulates that the domestic shed shall not be used for human habitation, for any commercial use or for the carrying out of any trade. In this regard, I recommend that a similar condition be included should the Board be minded to grant permission for the proposed development. In terms of allegations of unauthorised uses, I note that Planning Enforcement is the role of the respective Planning Authority, and An Bord Pleanála has no role in this matter.

## **6.3. Design & Visual Impact**

- 6.3.1. Planning permission is sought for works on site comprising the erection of what is described in the public notices as a metal domestic storage shed. Throughout the assessment of the application, the Planning Authority raised concerns with respect to the overall scale of this structure and noted that storage sheds associated with a domestic use would not typically exceed c. 50sq.m. The Applicant was requested to clarify what was the intended use of the structure given its overall size and also provide for a reduction in its floor area. In response to the Planning Authority's request, the Applicant reduced the floor area of the storage shed from c. 120sq.m. to 90sq.m. and provided for a slight reduction in its overall height (c. 500mm). In addition, modifications were proposed to the palette of materials and finishes, and the galvanised metal finish (roof and elevations) was to be replaced by a Nappe plaster

finish for the principal elevations with a blue/black slate roof. In terms of the nature of the use, the additional information response noted that “the proposed shed is to be used for the applicant’s vintage cars. The proposed use is the applicant’s hobby, and he requires the building to be able to restore his vintage cars under a roof”. On the basis of the information submitted at additional information stage, the Planning Authority deemed the principle of the proposal to be acceptable and permission was granted for the proposed development.

6.3.2. The modified storage shed has a rectangular shape and is located within the north-eastern corner of the site. The structure has a total depth of c. 6.4m. on its southern side and has a pitched roof form with a maximum height of c. 4m. The structure is set back c. 25m from the site’s road frontage boundary and I note that there are a number of large trees along this boundary that partially screen the site. Having regard to the overall scale, form and height of the proposed structure, its location within the north-eastern corner of the site, the setback of the structure from the roadside boundary and the palette of materials and finishes proposed, I am satisfied that the proposal will not detract from the character of the surrounding area and is therefore considered to be acceptable having regard to the visual amenity of the surrounding area.

#### **6.4. Residential Amenity**

6.4.1. As noted, the proposed structure is sited within the north-eastern portion of the site. On its eastern side, the domestic storage shed has a total length of c. 15.5m and is set back c. 2.3m from the eastern site boundary. It is noted that structure is sited adjacent to the area of amenity space associated with the property to the east (i.e. Third-Party Observer). A set back of in excess of c. 40m is provided from the western boundary which it shares with the neighbouring property (i.e. Third Party Appellant). Having regard to the nature of the stated use (i.e. a domestic storage shed), the overall size of the site, the scale, height and form of the proposed structure, the setback of the structure from the side boundaries and the overall size of the amenity areas serving the properties to the east and west of the site, I am satisfied that the proposal will not unduly compromise the residential amenity of the properties within the vicinity of the appeal site by reasons of overlooking, overshadowing or by being visually

overbearing. The proposed development is therefore considered to be acceptable having regard to the residential amenity of the surrounding area.

## **6.5. Drainage**

- 6.5.1. Upon inspecting the site, it was evident that the site was largely covered in hardstanding. The Planning Authority in their initial assessment of the application requested the Applicant to submit drawings and calculations for surface water disposal on the entire area of the site. At additional information stage, modified proposals were submitted which sought to restore the majority of the site back to grassland as shown on the revised site layout plan (Drawing No. PM/PLN-002). It was also proposed to install 2 no. BRE Digest Soakholes to deal with the surface water on site. The soakholes were proposed to be located to the west of the storage shed and the lands to the north of the existing dwelling and the lands to the south and south-west of the storage shed were identified as being restored to grassland. The Planning Authority attached conditions with respect to surface water drainage. Given the scale of the proposed structure and the proposals to restore a significant portion of the site to grassland, I am satisfied that proposal is acceptable subject to compliance with an appropriate condition.

## **6.6. Other Matters**

- 6.6.1. I note the information submitted by the third party appellant in relation to a boundary dispute. I cannot determine conclusively that the boundary is correctly located but, for the purposes of this appeal, the disputed boundary forms no part of the proposed development.

## **6.7. Appropriate Assessment**

- 6.7.1. Having regard to the nature and scale of the proposed development, the construction of a domestic shed on a rural site, and to the nature of the receiving environment, with no direct hydrological or ecological pathway to any European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 7.0 Recommendation

7.1. Grant of permission is recommended.

## 8.0 Reasons and Considerations

8.1. Having regard to the provisions of the Kildare County Development Plan, 2017-2023, including the stated residential use on site, the nature of the proposed use (i.e. a domestic storage shed) and the pattern of development in the surrounds, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would constitute an acceptable form of development at this location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 9.0 Conditions

1.	<p>The proposed development shall comply with the plans and particulars lodged with the application submitted, and as amended by Further Information received on the 22<sup>nd</sup> of December 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>The storage shed hereby permitted shall be used for domestic purposes only and shall remain ancillary to the dwelling. It shall not be used for human habitation, for any commercial use or for the carrying out of any trade. The structure shall not be let or sold separately to the dwelling.</p> <p><b>Reason:</b> In the interests of clarity and to regulate the use of the development in the interest of the proper planning and sustainable development of the area.</p>

3.	<p>In terms of construction management and the management of waste, the Applicant shall comply with the requirements of the Planning Authority.</p> <p><b>Reason:</b> In the interest of the proper planning and sustainable development of the area.</p>
4.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
5.	<p>During the construction and or demolition phase of the development, Best Practicable Means shall be employed to minimise air blown dust being emitted from the site.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 8am to 6pm Mondays to Fridays inclusive, between 9am to 2pm hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p>

	<b>Reason:</b> It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Enda Duignan  
Planning Inspector

22/09/2022