



An
Bord
Pleanála

Inspector's Report ABP-313087-22

Development	Retention and completion of a shed together with ancillary site development works
Location	Sixmilebridge, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	211104
Applicant(s)	Liam Nolan
Type of Application	Retention
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Liam Nolan
Observer(s)	Sarah Justice
Date of Site Inspection	29 th of December 2022
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The Appeal site has a stated site area of 0.12 ha and is located c. 400m south of the centre of Sixmilebridge. The site is located within a gated complex of at least two houses and other outbuildings/agricultural buildings. The site is located within the designated settlement boundary of Sixmilebridge.
- 1.2. There is an existing residential housing estate known as Gort Na Null located to the north of the site. The rear gardens of house numbers 1-4 adjoin the northern boundary of the site. Mature trees are located within the subject property along this boundary.
- 1.3. The building to be retained is a large agricultural style shed structure with a pitch roof finished with green/grey cladding. The structure has a gable end facing north towards Gort Na Null. The roof is supported by a steel column framework. Elevation block walls were not in situ. There is a sand based horse riding area directly east of the site.
- 1.4. At the time of inspection two tractors, a horse trailer, construction machinery, bales of hay and other materials were stored within the structure.

2.0 Proposed Development

- 2.1. The Application comprises-
 - The retention and completion of a shed structure and ancillary site works
 - Shed to be used for storage purposes.
 - Proposed to retain floor area of 260 sq.m, apex ridge of c. 6.709m and eaves of c. 5.359m.
- 2.2. The Application details a previous structure has already being demolished and the drawings indicate this was a hay with cattle shed and was agricultural in appearance with a barn and lean-to style roof profiles. The drawings detail a max height of c. 6.981 m. The stated original floor area was 152 sq.m
- 2.3. On the 13/12/21 the Planning Authority sought Further Information (FI) including the following-
 - Cross sectional drawing from the proposed shed to properties in Gort Na Null

- A daylight and sunlight analysis of loss of sunlight to rear gardens and properties
- Details of existing trees along the boundary
- Clarify the nature of proposed use

2.4. On the 31/01/22 the applicant submitted a response to the FI request including-

- Cross Section Drawing
- A shadow study
- The mature trees on the boundary are a mix of Sitka Spruce and Hawthorn, currently maintained at an approx. height of 10m. The trees provide privacy but overshadow around noon with the effect reducing as the day progresses.
- The shed is to be used for housing machinery and equipment associated with keeping horses e.g. tractors, trailers, horseboxes tack etc. It is not to be used for housing animals.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission on the 25th of February 2022 for one reasons as follows-

- It is considered that the structure to be retained, by reason of its height and scale together with its siting and proximity to existing residential properties to the north of the site in Gort na Null, would have an overbearing visual impact and would result in overshadowing of the rear garden spaces of these properties. The proposed development would therefore seriously injure the residential amenities and depreciate the value of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

4.0 Planning Authority Reports

4.1. Planning Reports

The reports of the Planning Officer (13/12/21 and 25/02/2) reflects the decision of the Planning Authority.

4.2. Other Technical Reports

- None on file

4.3. Prescribed Bodies

- Irish Water
 - 05/11/21- No objections
- Irish Aviation Authority
 - 19/11/21- No observations
- Irish Rail
 - Application is remote from railway so no further comments

4.4. Third Party Observations

There was one third party submission on behalf of residents of No's 1-6 Gort Na Null. The main issues raised relate to the unauthorised nature of the development and a previously invalidated Application. Photographs from properties in Gort Na Null have also been submitted.

5.0 Planning History

- None recent

6.0 Policy Context

6.1. Clare County Development Plan 2017-2023

- The site is governed by the policies and provisions contained in the Clare County Development Plan 2017 to 2023 (CDP).
- Sixmilebridge is a settlement is part of the Shannon Municipal District. Specific objectives are contained in volume 3b of the CDP Municipal District Written Statement and Settlement Plans.
- Sixmilebridge is identified as a Small Town in the settlement hierarchy.
- The site is zoned Existing Residential.

6.2. Guidance Documents

BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' 2022 edition.

6.3. Natural Heritage Designations

- 6.3.1. There are no relevant designated areas within the vicinity of the site.

6.4. EIA Screening

- 6.4.1. An Environmental Impact Assessment Screening report was not submitted with the Application.
- 6.4.2. The Planning and Development Regulations 2001 (as amended) provides that EIA is required for the following classes of development:
- Class (10) (b) (iv) of Schedule 5 Part 2-
 - *Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.*
- (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)*

- 6.4.3. The site is not located within a ‘business district’ and is not within ‘built up area’ as defined by the Regulations i.e. a city or town (where “city” and “town” have the meanings assigned to them by the Local Government Act, 2001). In this regard the site has a stated area of 0.12 ha and is well below the applicable threshold of 20 ha for ‘elsewhere’.
- 6.4.4. The proposal to be retained is located on ‘Existing Residential’ zoned lands. The structure and proposed storage use will not have an adverse impact in environmental terms on surrounding land uses. I note the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site (as discussed below in section 8.4). The development to be retained would not give rise to waste, pollution or nuisances that would be unexpected on such zoned lands given the existing uses. It would not give rise to a risk of major accidents or risks to human health. The development to be retained does not propose the use the public water and drainage services of Irish Water and Clare County Council, upon which its effects would be marginal in any event.
- 6.4.5. I consider that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that upon ‘Preliminary Examination’, an ‘Environmental Impact Assessment Report’ for the proposed development is not necessary in this instance.

7.0 The Appeal

7.1. Grounds of Appeal

A first party Appeal has been received. The Grounds of Appeal can be summarised as follows-

- The shed constructed replaced a shed that existed for many decades. The comparative scale of the building to be retained is not significantly greater than the pre-existing shed.
- There is a large mature boundary between the site and the Gort Na Null properties. Images from Google Earth show the significant shadows these trees cast.

- The shadow projection study demonstrates that it is the trees that overshadow the gardens of the houses to the North and not the shed to be retained.
- A submitted photograph demonstrates the scale of the shed relative to the height of the trees.
- As the trees are cause of the overshadowing the development to be retained does not injure residential amenity nor depreciate the value of these properties.
- The previous shed on site was used for agricultural purposes.
- The proposed use is for housing of machinery and equipment associated with keeping horses e.g. tractor, trailers, horseboxes, tack etc. It will not be used for housing of horses or livestock. This use is less injurious than the previous use.

7.2. Planning Authority Response

The Planning Authority's response to the grounds of Appeal received by email on the 29/03/22 and letter on the 30/03/22 can be summarised as follows-

- The previous agricultural unit at this location is accepted.
- The tall trees along the site boundary were noted in the assessment of the Application.
- The Planning Authority has no objection to the shed in principle
- There is a particular concern regarding the overbearing impact of the shed on houses no. 2 and 3 in Gort na Null where the tree height is low and where the structure becomes more overbearing and visible.
- It is considered that the proposal would negatively impact on the amenities of the existing properties.
- The Appeal does not sufficiently addresses this issue (from no.'s 2 and 3 in Gort na Null).

7.3. Observations

One third party submission has been received from Sarah Justice on behalf of the residents of 1-6 Gort na Null. The issues raised can be summarised as follows-

- Details of unauthorised works and enforcement history is set out.
- The scale, orientation, height and proximity of the new building is completely different to what was previously there.
- There are tall trees to the rear of No. 1 Gort na Null. These were topped and trimmed approx. 2 years prior. The tree line ends inside the corner of No. 2.
- There are very few trees from No's 2-6. Photos submitted demonstrate the prior and current view from the rear of No. 2 and 3.
- The black and white image in the Appeal from the front of the properties on Gort na Null does not accurately show the situation. A colour picture is included.
- Trees allow light through their branches and changes throughout the year. A solid structure does not.
- Trees are more pleasing to look at than an imposing warehouse structure.
- There is concern over the intended use of the structure. The applicant owns a construction company and the shed may be used for storage of commercial machinery.
- Concerns over health and safety of animals, storage of feed and odours so close to homes.
- Noise from wind, rain and hail on the steel galvanised structure effect amenities.
- Granting permission would have a devastating effect on the value of properties.
- There are alternative locations within the landholding better suited for this development
- The building is akin to a warehouse and is not in keeping with the residential area

8.0 Assessment

8.1. Introduction

- 8.1.1. I have examined the Application details and all other documentation on file, including the submissions received in relation to the Appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance.
- 8.1.2. I am satisfied the substantive issues arising from the grounds of this first party Appeal relate to the following matters-
- Visual Impact
 - Daylight and Sunlight Impacts
 - Appropriate Assessment

8.2. Visual Impact

- 8.2.1. The Planning Authority considers the development to be retained by reason of its height and scale would have an overbearing visual impact on properties in Gort Na Null. As a result of these impacts the proposal to be retained would seriously injure their residential amenities.
- 8.2.2. I have visited the site and inspected it from the rear of No 3 and 4 Gort Na Null as well as surrounding areas.
- 8.2.3. The drawings show the structure is set of the northern site boundary from 5m to 3m along its width from west to east. The elevation facing northwards is shown as ranging from approx. 6.709m at apex level to approx. 5.359m at eaves level. The cross section drawing submitted at FI stage shows a slight level difference of 0.2m between the sites thereby indicating a lower visible height from the rear of Gort Na Null than within the site.
- 8.2.4. I accept the structure to be retained is not the most aesthetically pleasing from a residential point of view. Nevertheless, the existing mature row of trees helps soften the visual impact from Gort Na Null. The structure is set reasonably back off the site boundary and has a relatively modest height for development within zoned lands and within the settlement boundary. The development to be retained does not have a

negative visual or overbearing impact that would significantly detract from existing visual amenities of Gort Na Null.

8.3. Daylight and Sunlight Impacts

- 8.3.1. The Clare CDP is relatively silent on standards relating to 'Daylight and Sunlight' impacts from new development. However, such impacts do have the potential to significantly detract from existing residential amenity and need to be considered given the proximity of houses in Gort na Null.
- 8.3.2. In the context of the subject Appeal, it is considered appropriate to refer to the principles of 'Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011) i.e. BRE209. The Board are reminded that this version has been revised since the submission of the Appeal and for the purpose of this assessment it is the 2022 version of BRE209 I will refer.
- 8.3.3. BRE209 provides a number of measures that contribute to assessing 'Daylight and Sunlight' impacts. Having examined the contents of this Application, the Appeal and BRE209, I consider the following measures appropriate for this assessment-
- Existing Diffuse Daylight to the rear of No.'s 1-6 Gort Na Null
 - Existing Sunlight to the interior of No.'s 1-6 Gort Na Null
 - Existing Sunlight to rear amenity areas of No.'s 1-6 Gort Na Null
- 8.3.4. Section 1.6 of BRE 209 specifically details that the advice given is not mandatory and should not be seen as an instrument of planning policy. However, it is considered appropriate that these measures are used to consider the impacts of the development to be retained upon existing residential amenity.
- 8.3.5. Appendix G of BRE deals with 'Trees and Hedges'. Section G1.2 refers to diffuse daylight and states-

It is generally more difficult to calculate the effects of trees on daylight because of their irregular shapes and because some light will generally penetrate through the tree crown. Where the effect of a new building on existing buildings nearby is being analysed, it is usual to ignore the effect of existing trees. This is because daylight is at its scarcest and most valuable in winter when most trees will not be in leaf.

Section G4.1 refers to the impact of buildings on sunlight in gardens and states

“.....trees and shrubs are not normally included in the calculation unless a dense belt or group of evergreens is specifically planned as a windbreak or for privacy purposes. This is partly because the dappled shade of a tree is more pleasant than the deep shadow of a building (this applies especially to deciduous trees).”

8.3.6. In their FI response, the Applicants indicate the mature trees on the boundary between the site and Gort Na Null are a mix of Sitka Spruce and Hawthorn. These are evergreen and deciduous trees. I inspected the site on 30/12/22 when daylight and sunlight penetration would generally be close to its minimum. I also note the trees to the rear of No. 3 and 4 are not the highest and most dense along the rear boundary of houses 1-4. In this context, I am satisfied that it is appropriate to ignore the effect of these trees as detailed in section G1.2 of BRE209.

8.3.6.1. **Existing Diffuse Daylight to the rear of No's. 1-6 Gort Na Null**

- a) Summary Box 2.1.21 of BRE 209 details that obstructions (such as the development to be retained) can limit access to light from the sky to existing properties.
- b) Summary Box 2.1.23 and Figure 20 provides a 'Decision Chart' or flow chart for considering diffuse daylight in existing buildings and the impact of proposed developments or in this case the development to be retained.
- c) The first measure recommended is if the new development is more than three times its height above the lowest window. Using the following-

- Drawing No. 890-PL-01 (site layout plan)
- Drawing No. 890-PL-05 (section submitted at FI stage)
- OSI aerial photography available to ABP and
- Having visited the site and inspected properties in Gort Na Null

it is clear No. 3 Gort Na Null is the property most likely to suffer loss of daylight as a result of the development to be retained i.e. the ground floor rear

return window facing south¹. Accordingly, if it is shown that this window does not suffer a significant loss of daylight, then all other windows to the properties of Gort Na Null will not suffer significantly from loss of daylight, given that they are further away and not directly facing the structure to be retained.

d) As per section 2.2.4 of BRE I consider-

- the height of the structure to be retained from a vertical section perpendicular from the ground floor window to the rear of No. 3 Gort Na Null is c. 6.4m.
- the distance of the development to be retained from the south facing rear window of No. 3 is considered approx. 12m (allowing for the c 0.10m window recess in elevation wall).
- the height of window for the vertical section is taken as 1.5m

and therefore the distance of the development to be retained is not more than three times its height above the lowest facing window of No 3 Gort Na Null i.e. $3 \times (6.4 - 1.5) = 14.7$ m i.e. 12m is less than 14.7m. As the structure is closer than required the next step of BRE 209 Figure 20 should be followed.

- e) The next recommended measure requires a check if the development subtends more than 25 degrees at the lowest window as demonstrated in Figure 14 of BRE 209. To assess this, Figure 20 requires the angle from the centre of the window to the height of the proposed development to be calculated.
- f) This can be calculated using trigonometry. I have estimated the height of the development in vertical section perpendicular from the ground floor window to the rear of No. 3 Gort Na Null is c. 6.4m and the separation distance to the window- c. 12m). I note sections 2.1.13, 2.2.6 and 2.2.17 of BRE209 generally recommends a height of 1.6m for a floor to ceiling window or patio door. Having inspected the window, I consider this to be a reasonable figure to use to calculate the angle.
- g) I estimate the angle 1.6m above ground to the height of the proposed development (6.4m-1.6m=4.8m) to be c. 21.8 degrees. The development

¹ Note this window is not located on the rear elevation closest to the Application site but is on the first recessed south facing elevation wall.

therefore does not subtend by more than 25 degrees at the lower window of the rear elevation of No. 3 Gort Na Null.

- h) DWG No. 890-PL-05 submitted in response to FI, provides a section through the site and the properties of Gort Na Null (generally). It suggests a lower ground level of 200mm between the properties. Therefore, using a lower window height of 1.4m ($6.4\text{m} - 1.4\text{m} = 5\text{m}$) I calculate the angle from the window to be c. 22.6 degrees.
- i) As the roof of the structure is pitched, I have also considered the angle at its highest point - 6.709m. I am satisfied the window does not meet this height in vertical section perpendicular but if it did, the angle in section ($6.709\text{m} - 1.4\text{m} = 5.309\text{m}$) is calculated to be 23.86 degrees and still would not subtend by more than 25 degrees.
- j) Having considered all of this in the context of 'Figure 20 Decision Chart' of BRE209 I am satisfied that daylighting to the rear of No. 3 is unlikely to be significantly affected by the proposed development and further investigations are not required.
- k) However, given the level differences between the site and evident reliance on estimations, it is reasonable to consider the next stages of Figure 20.
- l) The next recommended measure is the level of skylight received to existing buildings. This is called the Vertical Sky Component or VSC. BRE209 recommends that existing neighbouring properties should retain a VSC of at least 27%, or where it is less, to not be reduced by more than 0.8 times the former value (i.e. 20% of the baseline figure). This is to ensure that there is no perceptible reduction in daylight levels and that electric lighting will not be needed more of the time.
- m) The Application and Appeal does not include an assessment of diffuse light or provided VSC values Gort na Null. VSC values in this instance are clearly dependent on the angle from the centre of the subject window to the rear of No.3 to the height of the development to be retained.
- n) For the rear lower window of No. 3, I have already calculated this to be c. 21.8 – 23.86 degrees. Having considered Table F1, Figures F1 & F2 of BRE209 I

am satisfied that the equivalent VSC to the lower floor window in No. 3 would be between 28% and 30%.

- o) Based on these VSC values, Figure 20 Decision Chart indicates that daylighting to the lowest and closest window at the rear of No. 3 Gort Na Null is unlikely to be affected and I therefore consider no further daylight investigations are required.

8.3.6.2. Sunlight to Interior of Existing Property

- a. Section 3.2 of BRE209 provides guidance in relation to safeguarding access of sunlight to interiors of existing dwellings. Summary box 3.2.13 states-

'If a living room of an existing dwelling has a main window facing within 90 degrees of due south and any part of a new development subtends an angle of more than 25 degrees to the horizontal measured from the centre of the window in a vertical section perpendicular to the window, then the sunlighting of the existing dwelling may be adversely affected.'

- b. Having assessed the properties in the area, I consider the only windows² that face within 90 degrees of due south directly towards the development to be retained are those to the rear of No. 2-4 Gort Na Null with No. 3 being the closest and therefore most impacted. As already determined in section 8.3.6.1 above, I am satisfied that no part of the new development subtends an angle of more than 25 degrees to the lowest window of No.3. Accordingly I am satisfied that the proposed development will not adversely impact upon sunlight to the interiors of No's. 2 - 4.

8.3.6.3. Existing Sunlight to rear amenity areas of No.'s 1-6 Gort Na Null

- a. The Planning Authority's refusal reason details concerns relating to overshadowing of the existing rear garden spaces of residential properties in Gort Na Null.
- b. The Applicant argues the structure replaces a shed that existed for many decades, is of a comparative scale and is not significantly greater than the pre-existing shed. They also refer to the large mature boundary between the

² Ground floor windows only considered as they are subjected to greater impact

site and the Gort na Null properties as well as a submitted shadow projection study, which they argue, shows it is the trees that overshadow the gardens of the houses to the north and not the shed to be retained.

- c. As discussed in paragraph 8.3.5 above, Section G4.1 of BRE209 clearly details that trees and shrubs are not normally considered for sunlight assessment purposes because the shade of a tree is more pleasant than the deep shadow of a building.
- d. Section 3.3 of BRE 209 considers the impact of development on sunlight to existing amenity spaces such as private gardens. Section 3.3.7 recommends that at least half of the amenity space should receive at least two hours of sunlight on March 21st (the Equinox) and in scenarios where detailed calculations cannot be carried out it is suggested that the centre of the area should receive at least two hours of sunlight on March 21st. Section 3.3.9 again details that trees need not normally be included. Section 3.3.11 clearly detail the guidance relates to existing gardens areas affected by new developments.
- e. The Applicant has submitted a 'Shadow Study' with their FI response and with their Appeal. This study focuses on the shadows cast with and without the trees in June and November at noon and in the evening. The projection drawings labelled with 'no trees' suggests significant overshadowing from the existing structure i.e. possibly in excess of c. 50% of the garden spaces to-
 - the rear garden of No. 3 Gort Na Null at noon in November and
 - the rear garden of No 4 and 5 Gort Na Null in the evening
- f. Overshadowing concerns were raised by the Planning Authority as part of their FI request on the 13/12/21. The applicants were clearly advised to consider the impact of overshadowing on private gardens in Gort Na Null having regard to the publication "Site Layout Planning for Daylight and Sunlight: A Guide to Good practice' i.e. BRE209.
- g. The 'Shadow Study' submitted with the Appeal does not consider the impacts of overshadowing on the loss of sunlight as detailed in section 3.3 of BRE209. Based on the information on file, I cannot say with certainty if at least half of each rear garden of No's 1-6 Gort Na Null would receive at least two hours of

sunlight on the 21st March as a result of the development to be retained. Furthermore, should the gardens not meet this requirement, I cannot say with certainty if the gardens would still receive at least 0.80 times the amount of sunlight previously received on the same date March 21st.

- h. In the absence of an Sunlight Assessment focussing specifically on the sunlight impacts on March 21st (the equinox) in accordance with the guidance and requirements of BRE209, it is considered that the development to be retained should be **refused** as it can not be ruled out that it would not negatively impact upon existing residential amenities.

8.4. Appropriate Assessment

- 8.4.1. Having regard to the nature of the proposed development to be retained, the original structure on site, its location on existing zoned lands, and the separation distance to European sites, no Appropriate Assessment issues are considered to 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.

9.0 Recommendation

- 9.1. I recommend that permission is refused for the following reason.

10.0 Reasons and Considerations

11.0 Conditions

- 1. Based on the information submitted with the application and appeal, and having regard to the orientation, height and extent of the development to be retained, and its proximity to private amenity spaces of neighbouring property in Gort na Null, the Board is not satisfied the structure does not contribute to an unacceptable loss of sunlight to existing private residential amenity spaces in Gort Na Null. It is considered the development to be retained would, therefore, seriously injure the residential amenities of existing property in the area and is contrary to the proper planning and sustainable development of the area.

Adrian Ormsby
Planning Inspector

13th of January 2023