



An  
Bord  
Pleanála

## Inspector's Report ABP 314571-22

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<b>Development</b>	Retention in sought for as built detached pitched roof domestic shed building.
<b>Location</b>	Aghnahederny, Ballyjamesduff, Co. Cavan.
<b>Planning Authority</b>	Cavan County Council.
<b>Planning Authority Reg. Ref.</b>	22/264.
<b>Applicant(s)</b>	Paul Farrelly.
<b>Type of Application</b>	Retention.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Paul Farrelly.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	16 <sup>th</sup> May 2023.
<b>Inspector</b>	Aisling Dineen.

## **1.0 Site Location and Description**

- 1.1. The appeal site is situated in a rural area c. 4.8 km southwest of Ballyjamesduff in Co. Cavan. The site comprises a domestic dwelling and a domestic garage/shed (Subject of retention), which is positioned to the rear of the domestic dwelling and in the northeast corner of the site. The domestic shed and the attendant area to it, is enclosed by a garden fence with a wide access entrance. There is considerable mature screening/vegetation along the rear northwest and northeast boundaries of the site, proximate to the shed.
- 1.2. There are no immediately adjacent development/houses to the appeal site, however there are a number of dispersed homesteads in the general area.

## **2.0 Proposed Development**

- 2.1. It is proposed to retain an as built domestic shed building with a pitched roof. The shed is stated to measure 246 sq. m. The ground floor area is stated to be 206 sq. m. and the first-floor office space is stated to measure 40 sq. m. Plans indicate that the length and width of the shed is 24.24 metres by 9.04 metres respectively and the height is 5.73 metres.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority made a decision to refuse planning permission for the following reason:

1. Having regard to the scale of the shed seeking retention permission, the planning authority considers that the development represents non-ancillary and non-subservient development associated with the main dwelling on site and thus does not represent a domestic type garage. It is considered that to permit development of this type in the rural countryside would set an undesirable precedent for similar type developments, would materially contravene objectives DGS01, DGS02 and DGS04 of the Cavan County Development Plan 2022-2028, which seeks to permit domestic garages

which are domestic in appearance and in character with the domestic dwelling, subservient in scale to the domestic dwelling and thus would be contrary to the proper planning and sustainable development of the area.

The Chief Executive's decision reflects the planners report.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The planners report states that following an inspection of the site, that the shed was deemed unauthorised development and a warning letter was issued to the applicant.

The report also states that the scale of the shed is not ancillary or subservient or in character with the existing residential dwelling on site and therefore would conflict with listed objectives of the County Development Plan 2022-2028.

### **3.2.2. Other Technical Reports**

### **3.2.3. Area Engineers Report**

3.2.4. No objection subject to conditions.

3.2.5. The existing entrance has not been constructed as per approved planning, planning register reference number 01/614.

## **4.0 Planning History**

Planning Register Reference Number 01/614: Planning permission granted for dwelling house, garage and ancillary development.

Planning Register Reference Number 16/275: Application Withdrawn.

## **5.0 Policy and Context**

### **5.1. Cavan County Development Plan 2022-2028**

Regarding domestic garages, the Cavan County Council Development Plan lists the following objectives:

DGS 01 The design, form and materials should be ancillary to and consistent with the main dwelling on site.

DGS 02 Structures should generally be detached and sited to the rear or side of the dwelling house and be visually subservient in terms of size, scale and bulk.

DGS 03 Structures should be used solely for purposes incidental to the enjoyment of the dwelling and not for any commercial, manufacturing, industrial use or habitable space in the absence of prior planning consent for such use.

DGS 04 One detached domestic garage only shall be permitted for any single dwelling. Domestic garages shall be of reduced height, domestic in appearance and in character with the main dwelling. Carports shall normally only be permitted to the rear of a dwelling or where they are incorporated into the design of the dwelling that does not add visual intrusion to the dwelling.

## **5.2. Natural Heritage Designations**

Moneybeg and Clareisland Bog SAC is located c. 7.8 km southwest of the appeal site. Lough Sheelin SPA is situated c. 4 km southwest of the appeal site.

## **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**

- A previous planning application on the site is referred to. This application related to a four-bay shed with slurry holding tank beneath. This was subject of further information, which sought details on the location of an agricultural

shed of this type and appropriate assessment. The application was deemed withdrawn as no further information was submitted.

- The planning authority appeared to have no objection to the size of the proposed building and only took issue with the intended use.
- The applicant then constructed an agricultural building, under Exempted Development provisions; Part 3, Article 6, Exempted Development – Rural, Class 9.
- The Exempted Development – Rural, Class 9 Regulations are cited and it is stated that the as-built shed complies with Part 3, Exempted Development – Rural, Class 9.
- The shed was constructed in 2017.
- The shed building is much smaller in ground floor area and height than the agricultural shed proposed under planning register reference number 16/275.
- A warning letter issued to the applicant and the shed was deemed unauthorised on the 15<sup>th</sup> February 2022. The time period between the notification of potential unauthorised development and when the shed was constructed is stated to be circa 4.5 years.
- The applicant only used the shed building for a purpose which is incidental to the enjoyment of a house.
- References to a workshop/warehouse are inaccurate. The applicant has never carried out these types of activities in the shed building.
- The area engineer said that he had no issues with the as-built shed building.
- There were no third-party submissions during the planning process.
- A number of previous planning permissions granted by Cavan County Council are referred to, which include planning register numbers: 17/146, 17/155, 17/416, 18/479, 19/160, 20/436, 22/107.
- Regarding previous planning permissions granted by Cavan County Council the following points are made:

- The subject shed has greater separation distances to the dwelling than other sheds granted permission.
- The subject shed has greater separation distances to the road than other sheds granted permission.
- A number of other sheds granted permission were not always positioned behind the dwelling.
- The subject site is large enough so that the shed can be easily absorbed within it and not have a detrimental effect on the main dwelling.
- The as-built shed building is integrated into the landscaping and is barely visible from the public road.
- The applicant operates as a builder and the shed is for storage of construction equipment and materials only.

## 6.2. Planning Authority Response

- Regarding planning precedent cited by the appellant, each planning application should be assessed independently and on its own merits.
- The Cavan County Development Plan 2022-2028 (CDP) came into effect on the 11<sup>th</sup> June 2022, since the assessments on the applications referenced under the appellants submission to the board.
- The said CDP saw the introduction of stringent objectives, which seek to permit domestic garages, which are domestic in appearance and in character with the domestic dwelling and subservient to same.
- It is requested that the board uphold the decision to refuse permission for retention on the grounds that the scale of the shed is not ancillary, subservient or in character with the existing residence.
- Regarding the appellants assertion that the shed complies with Part 3, Article 6 Exempted Development – Rural, Class 9, the board is referred to the development description, which includes the term ‘domestic’ shed.
- Part 3, Article 6 Exempted Development – Rural, Class 9, relates to works consisting of the provision of a store, barn, shed, glass house, or other

structure, not being of a type specified in class 6,7 or 8 of this part of this schedule, and having a gross floor space not exceeding 300 square metres.

- The appellants submission to the board states that the shed is for storage of construction equipment and materials only and that the appellant has used it for purposes incidental to the enjoyment of a house.
- The conditions and limitations associated with the said use class 9, provide that '*No such structure shall be used for any purpose other than the purpose of agriculture or forestry*'. It is submitted that the domestic shed structure would not fall under this class.

### 6.3. **Observations**

None.

### 6.4. **Further Responses**

None.

## 7.0 **Assessment**

7.1. The main issues that arise for assessment in relation to the appeal can be addressed under the following headings:

- General
- Public Notice
- Planning and Development Regulations 2001 (Use Classes).
- Planning Precedent
- Visual Amenity
- Appropriate Assessment

### 7.2. General

7.3. The agent for the appellant has submitted that on the 15<sup>th</sup> February 2022 the subject shed was deemed to be unauthorised and a warning letter was issued to the applicant. This was on foot of a complaint made to the Council on the 29<sup>th</sup> January

2022, which suggested that a warehouse/workshop was built on site without planning permission. The agent for the appellant has stated that the time period between the construction of the shed and the complaint is c. 4.5 years. The agent for the appellant submits that the shed was never used as workshop/warehouse and that the structure was only ever used for purposes incidental to the enjoyment of a dwelling. The subject application for retention and the appeal at hand attempts to regularise the planning status of the structure.

7.4. Public Notice

7.5. There is some contradiction generated within the first party submission to the appeal regarding the actual nature and use of the structure. It is suggested in one part of the appeal submission that the shed is only ever used for purposes incidental to the enjoyment of a dwelling and for the applicants work related equipment, and under another section of the appeal submission, it is suggested that the shed is being used under forestry/agriculture use pursuant to Part 3, Article 6, Exempted Development – Rural, Class 9, of the Planning and Development Regulations 2001 (as amended).

7.6. I refer to the public notices, which clearly describe the structure as an '*As built detached pitched roof domestic shed building*'. It is considered that if the nature of the use of the subject shed is different to that advertised, then an appropriate application for retention reflecting the correct use should be made.

7.7. Having inspected the site and reviewed the details on file, I concur with the planning authority's submission to the appeal, regarding the public notice, which refers that the established use is considered to be domestic.

7.8. It is considered that owing to the nature of the contents of the subject garage, that it is in effect, under domestic use and presently being used for 'purposes incidental to the enjoyment of a dwelling'. The contents include fire wood, bicycles, timber, gym equipment, car trailer etc. I note that there is a mezzanine level within the shed, which is stated to accommodate a home office, which is satisfactory use and considered to be incidental to the enjoyment of a dwelling house.

7.9. There is no evidence on file to demonstrate that any commercial activity has been, is being or is about to be carried out. Additionally, I note that no submission or evidence of such was submitted to the planning authority during the prescribed public consultation period. I consider that if the Board is minded to grant permission



that an appropriate condition be applied limiting the use of the garage to purposes incidental to the enjoyment of the dwelling and precluding any commercial activity.

7.10. Planning and Development Regulations 2001 (Use Classes)

7.11. The agent for the appellant submits that after a previous application for an agricultural shed was deemed to be withdrawn, following no response to a Further Information request, the applicant sought to construct a shed under, Part 3, Article 6, Exempted Development – Rural, Class 9, of the Planning and Development Regulations 2001 (as amended).

7.12. Class 9 refers to '*Works consisting of the provision of any store, barn, shed, glass house or other structure, not being of a type specified in class 6,7 or 8 of this part of this schedule, and having a gross floor space not exceeding 300 square metres*' The conditions and limitations pursuant to Class 9 are stated by the agent for the appellant.

7.13. *Condition and Limitations Item No 1*, states the following:

*No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.*

In this regard the appeal submits that the applicant keeps sheep on his land behind the dwelling. Regarding all other Conditions and Limitations, the appeal submission states that the subject shed is compliant.

7.14. Additionally, the applicant may well be involved in agriculture but there is no evidence on file to substantiate that the applicant is engaged in agricultural/forestry activity. Also, it is unusual that there was no physical inter-connection between the rear of the appeal site, or within the area of the shed structure, with the land behind the site, if the applicant has sheep on the land behind the site. Furthermore, from inspecting the site and having reviewed the additional photographic details on file, it does not appear that the use involves agriculture/forestry use.

7.15. The appeal submission attempts to draw on a previous application for an agricultural shed on the subject site, as justification for an agricultural use. I consider that as this

application was withdrawn, it has no legal standing and is not relevant, say except for the fact that there appears to have been an intention to build a shed on the site at one point in time.

7.16. I do not consider that sufficient details have been submitted to demonstrate that the subject shed is exempt development under Part 3, Article 6, Exempted Development – Rural, Class 9, of the Planning and Development Regulations 2001 (as amended) and I consider that the appeal should be assessed as a domestic shed, as per public notices.

7.17. Planning Precedent

7.18. The appeal submission cites a number of planning permissions, for domestic sheds, which were granted by Cavan County Council, from 2017 to 2022. This section of the appeal includes a matrix under which different characteristics of the various applications are compared. It is noted that none of the examples quoted have a floor area equal to or greater than the shed, the subject of retention, which has a stated floor area of 246 sq. m.

7.19. The planning authority under its submission to the appeal states that all of the planning applications submitted under the appeal were decided under a previous development plan, and that the current plan, adopted on the 11<sup>th</sup> June 2022, has more stringent objectives regarding domestic garages.

7.20. I note that under the previous Development Plan, the Cavan County Development Plan 2014 – 2020 did have an objective, which reflects the spirit of the current objectives, albeit not as detailed. Objective DMO9 of the 2014 plan stated the following: *One detached domestic garage only shall be permitted for any single dwelling. Domestic garages shall be single storey, domestic in appearance and in character with the domestic dwelling. Carports are not permitted in rural locations.*

7.21. Regarding planning precedent, I concur with the planning authority's submission to the appeal, wherein it is stated, that; '*Each application is assessed independently on its own merits*'. The site-specific context of each and every application, would have its own characteristics/attributes such as screening, absorption/assimilation capacity, context with roads layout, relationship with main dwelling etc. Therefore, there is not one single template, which can be replicated on any given site, including the subject site.

7.22. However, I note the approach by the planning authority under planning register number 21/132. This application relates to the retention of a large garage structure, within the curtilage of a dwelling. There are differences in the nature of this application and the subject application/appeal, such as, it is described as 'A *single storey shed with adjoining lean-to used for the repair of lawn mowers*'. Other planning factors such as local economic need for the use proposed were taken into account under this assessment, so in many ways it is not a like with like application. However, I note the approach taken by the planning authority with specific regard to the overall visual amenity/scale/visual impacts of the garage structure. This approach is reflected under Item 6 of the further information request, dated 27<sup>th</sup> April 2021, which stated the following:

*6. It is considered that this commercial development, together with the outside storage of machinery, has some localised negative visual impact, when viewed from the public road. Consider measures to reduce this impact, including the use of additional landscaping at the front of the site, to provide more screening.*

7.23. I consider that the approach by the planning authority in this case was reasonable and appropriate and afforded the applicant an opportunity to mitigate any negative visual impacts, in that site specific context. However, I also note that this solution would not always be workable or applicable in other site-specific contexts.

#### 7.24. Visual Amenity

7.25. The reason for refusal cites, to paraphrase, that having regard to the scale of the shed that the proposal would be non-ancillary and non-subservient to the main house and thus would contravene policy objectives DGS01, DGS02 and DGS04 of the County Development Plan.

7.26. I consider that from my inspection and review of details on file that the use appears to be ancillary, therefore I do not concur with the statement that it is non-ancillary and there is no evidence on file to substantiate that the use is non-ancillary. I note no observation was made during the planning application consultation period, which would suggest otherwise.

7.27. I note that there is no other garage structure on site.

- 7.28. The shed structure is unquestionably large in scale; however, it is set back into the northeast corner of the site, which has the benefit of backdrop mature trees, which contain the rear site boundaries. Therefore, it is screened from view, to a large extent from the northwest and northeast perspectives. From the road to the west of the site one can observe that the shed appears as subservient in scale to the main dwelling. The dark green cladding also has the impact of assimilating the shed into the mature tree backdrop from this perspective. The main concern with regard to overall scale is the view from the front elevation and on approaching the site from the south, on the approach road, wherefrom the view of the shed appears to be locally prominent. I note that the shed area is enclosed with a wooden garden fence c 1.2 to 1.4 metres in height. I consider that a detailed planting scheme adjunct to the said garden fence boundary, particularly south of the shed structure and throughout the site, of established species, would materialise the required screening in a time efficient manner.
- 7.29. I consider that this approach would be consistent with the approach adopted by the planning authority as discussed under para 7.22 and 7.23, with respect to planning register reference number 21/132. This consistent approach would allow the applicant an opportunity to mitigate against any localised negative visual impacts, in this site-specific context, which already has the benefit of backdrop screening. As the shed is appropriately positioned to the rear and northeast of the dwelling, the visual impacts of the shed could be mitigated, particularly from the south, in this site-specific instance.
- 7.30. Accordingly, I consider that permission for retention of the shed should be granted subject to conditions and in particular that a detailed planting scheme be agreed with the planning authority. The use of the shed should also be appropriately conditioned.
- 7.31. Appropriate Assessment
- 7.32. Having regard to the limited nature of the proposed development and the nature of the receiving environment and the proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. I recommend that planning permission for retention be granted.

## 9.0 Reasons and Considerations

Having regard to the pattern of development in the area, it is considered that, subject to compliance with conditions set out below, the development proposed for retention would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity. The development proposed for retention would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be retained 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 and the development shall be retained in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The building shall be used solely for purposes incidental to the permitted dwelling house on site. It shall not be sold, let or otherwise transferred or conveyed, or used for any commercial or retail purpose save following a grant of planning permission for such use.</p> <p><b>Reason:</b> To ensure that the structure is used solely in conjunction with the residential use on site.</p>

3.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order.</p> <p>This scheme shall include the following:</p> <p>A plan to scale of not less than [1:500] showing –</p> <ul style="list-style-type: none"><li>(i) The measures, including the use of established species, to be put in place for the adequate and timely screening of the domestic shed structure.</li><li>(ii) Details of screen planting with particular emphasis to be placed on the area to the south of the entire garden fence, which encloses the shed area.</li><li>(iii) A timescale for implementation.</li></ul> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, shall be replaced within the next planting season with similar species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interest of residential and visual amenity.</p>
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Aisling Dineen  
Planning Inspector  
24<sup>th</sup> May 2023