



An
Bord
Pleanála

Inspector's Report

ABP-315644-23

Development	Retention and permission to complete a home office/gym to rear of dwelling, and permission for and all associated site works and services.
Location	18 Weirhhope, Lagavooren, Drogheda, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	22358
Applicant	Sean Brennan
Type of Application	Permission & Retention
Planning Authority Decision	Grant Retention Permission
Type of Appeal	Third Party
Appellant	Noel and Mary Bailey
Observer	None
Date of Site Inspection	3 rd June 2023
Inspector	Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site is located at 18 Weirhope, an established residential area c. 1 km east of the centre of Drogheda, Co Louth.
- 1.2. The appeal site accommodates a two storey, end of terrace house on a long, narrow site. The rear garden of the property slopes upwards, from north to south with a level difference of c. 10 metres between the north/front of the appeal site and the south/rear of the appeal site. A timber structure, described as a home office/gym, is located at the highest/southernmost point of the rear garden.
- 1.3. The appeal site is bound to the east and west by the rear gardens of neighbouring properties. The rear/southern boundary of the appeal site is formed by a mounded area, beyond which are lands in agricultural use.

2.0 Proposed Development

- 2.1. The proposed development comprises retention permission of a structure which it is proposed to use as a home office/gym (stated floor area c. 45 sqm), permission for its completion, and associated site works.
- 2.2. Material finishes to the structure comprises timber. The structure has a principle height of c. 3.5 metres and is positioned c. 32 metres from the host property, 18 Weirhope. The structure is set off the western site boundary c. 0.7 metres, and c. 3 metres from the eastern site boundary.

3.0 Planning Authority Decision

3.1. Request for Further Information

Prior to the decision of the Planning Authority to grant retention permission¹ for the proposed development, the Planning Authority requested Further Information.

¹ I note that the applicant sought permission and retention permission, as per the development description in the public notices and as indicated in the planning application form whereas the Notification of Decision issued by the Planning Authority refers to 'retention' permission. I further note that Condition no. 1 refers to the development being 'retained and completed'. In determining this appeal I have considered the proposed development as comprising retention permission and permission, as set out in paragraph 2.1 (above).

3.1.1. **Further Information was requested on the 23rd June 2022 as follows:**

- Item 1 – confirm use of structure, address overlooking of adjoining property from windows on west elevation of structure, and submit remediation/landscape plan for the site.
- Item 2 – undertake and submit details of soil permeability testing for the site, and submit details of soakaways to serve the structure.
- Item 3 – submit revised public notices (if necessary).

3.1.2. **Further Information submitted on 29th November 2022**

- Item 1 – Affidavit submitted stating that the structure is ancillary to the house, to be used as a home office/gym, that it will not be used for habitable use, or be sub-let. Opaque glazing proposed in the window opens on the side/western elevation of the structure in lieu of existing clear windows. Supplementary hedgerow proposed (see revised site layout drawing, *Drawing No. HE-22-4523-2.1*). Remedial works, comprising additional planting, proposed to rear of structure.
- Item 2 – Testing of the site for permeability is not possible due to the inaccessibility of the site for a mechanical digger. Provisional testing of the site was conducted which indicated poor soil permeability. The provision of a soakaway on the site is not feasible noting the constraints of the site. As per the GSDSDS, where SuDs cannot be accommodated due to site circumstances, alternative solutions may be provided. In order to reduce run-off from the site, it is proposed to install planters into which run-off from the structure can discharge to, allowing infiltration into the ground.

3.2. **Decision**

The Planning Authority issued a Notification of Decision to GRANT retention permission on the 16th December 2022 subject to 6 no. conditions. The following conditions are of note;

C2 – use of structure shall be incidental to the enjoyment of the house, and not for residential, business or commercial purposes.

C3 – replace glazing on west elevation with fixed, opaque glazing.

Planning Authority Reports

3.2.1. Planning Reports

The first report of the Planning Officer notes the following:

- The intended use of the structure requires clarification. Residential use would not be considered acceptable.
- The proposal does not impact the residential amenity of neighbouring properties in terms of overbearance or overshadowing, noting the separation distance of c. 30 metres between the structure and the rear of the properties within Weirhope.
- Overlooking from the windows on the west elevation of the structure is required to be addressed.
- The disposal of surface water on the site is unclear.

3.2.2. The second report of the Planning Officer notes that the applicant's response to the Further Information request is acceptable, that the proposed development will not result in any negative impact on the residential amenity of any dwelling in the area in terms of overlooking, overbearance or overshadowing, and that the landscaping proposed will assist with the integration of the structure.

The report of the Planning Officer recommends a grant of retention permission consistent with the Notification of Decision which issued.

3.2.3. Other Technical Reports

None received.

3.3. Prescribed Bodies

None received.

3.4. **Third Party Observations**

7 no. third party observations were received by the Planning Authority, 3 no. of which were in respect of the Significant Further Information received by the Planning Authority. Issues raised in the observations can be summarised as follows;

- Intended use of, and requirement for the proposed structure queried.
- Concerns regarding the impact on the residential amenity of neighbouring property arising from loss of privacy. Opaque glazing does not guarantee privacy.
- Proposal results in devaluation of property in area.
- Concerns regarding the visual impact of the proposed structure.
- Antisocial behaviour experienced by neighbours.
- Proposal has resulted in destruction of hedgerow and habitats.
- Maintenance of boundaries is problematic. Damage has occurred to party boundaries.
- Wording of Affidavit is ambiguous.
- Disruption to water table is not addressed.
- The landscape works do not constitute remediation.

4.0 **Planning History**

Appeal Site

None.

5.0 **Policy Context**

5.1. **Development Plan**

- 5.1.1. The Louth County Development Plan 2021-2027 is the relevant development plan, under which the appeal site is zoned 'A1 ' Existing Residential'. The provisions of the

Louth County Development Plan 2021 - 2027 relevant to this assessment are as follows:

- Section 13.8.37 - Domestic Garages and Outbuildings.

5.2. Natural Heritage Designations

- River Boyne and River Blackwater SAC (Site Code 002299) – c. 270 metres north.

5.3. EIA Screening

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, (as amended) and therefore is not subject to EIA requirements.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal by Michael Halligan Planning Consultants on behalf of Noel and Mary Bailey, No. 17 Weirhope, against the decision to grant retention permission. The grounds for appeal may be summarised as follows;

- The proposed development would seriously injure the residential amenities of the appellants' dwelling, devaluing same. This impact would arise as a consequence of noise, overbearance, overlooking and the obtrusiveness of the proposal.
- The provision of opaque glazing to the windows on the western elevation of the structure does not address the appellants' concerns.
- The proposed development would materially contravene the residential zoning of the area, that being 'to protect and enhance the amenity and character of existing residential communities'.
- The appellants are concerned that the structure will be used for residential purposes, despite conditions requiring otherwise.

- The works referred to as remediation do not address the loss of habitat, including trees which were cut down on the site. The cutting down of trees on the site breaches the Wildlife Acts 1976-2018.
- Permitting the proposal would set a precedent for similar development.
- The applicant's response to the issue of surface water drainage on the site is unacceptable noting that the applicant chose to locate the structure in an elevated part of the rear garden.
- The absence of a retaining wall at the lower end of the site creates a safety hazard.
- Windows and a door on the front elevation of the structure also result in overlooking. The conditions attached do not address this.

6.2. **Applicant Response**

None received.

6.3. **Planning Authority Response**

A submission has been received from the Planning Authority stating they have no further comment to make in respect of the appeal.

6.4. **Observations**

None received.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant national and local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Impact on Residential Amenity
- Impacts on Visual Amenity

- Other Issues
- Appropriate Assessment

7.2. Impact on Residential Amenity

- 7.2.1. The appellants raise concerns in relation to the impact of the structure on the amenity of their property, with specific reference to overlooking/loss of privacy, overbearance, and contend that the structure is obtrusive due to its elevated position on the site. The appellants also raise concerns in relation to the use of the structure, specifically that it is to be used as a residence.
- 7.2.2. I note that the structure is located in excess of 30 metres from appellants' residence. Whilst the appellants experience the structure as a prominent feature, this is for the most part due to the fact that the rear gardens of the dwellings at this location are elevated relative to the dwellings they serve and as a consequence the siting of any shed type structure to the rear of these dwellings will be dominate in this context. In my opinion such structures are prevalent in residential settings and I do not consider that the structure would result in any significant negative impacts on the residential amenity of the adjoining dwellings in terms of overbearance.
- 7.2.3. Noting the use of the shed as a home office/gym, the separation distance between the structure and the appellants' property, the provision of fixed, opaque windows on the west elevation of the structure and the provision of screen planting with a minimum height of 1.5 metres along the western site boundary, I do not consider that the proposal results/will result in any significant overlooking of adjoining property, including the appellants' property.
- 7.2.4. In summation, having regard to the forgoing, I do not consider that the proposed development would have a significant negative impact on the residential amenities of adjoining property, such as to warrant a refusal of retention permission. Furthermore, I consider that the proposed development accords with Section 13.8.37 of the Louth County Development Plan 2021 – 2027, which requires that the scale/size of garages/outbuildings are commensurate with the size of the site, and that such structures integrate into the adjoining environment.

7.3. Impact on Visual Amenity

7.3.1. Due to the position of the appeal site, in particular its elevated rear garden, glimpses of the structure are possible from locations to the north and east of the appeal site. That being said, in the context of the wider developed landscape, I do not consider the structure to be an incongruous feature. Furthermore, I do not consider that the structure is excessive in scale, noting its floor area, and its ridge height. I am cognisant that a shed structure with a height of 4 metres could be constructed on the site under exempted development provisions, and whilst the maximum floor area provided under exempted development provisions would be limited to 25 sqm, the resulting structure would in my opinion be comparable in terms of its visual impact having regard to the elevated nature of the appeal site. In summation, I do not consider that the proposed development would have a significant negative impact on the visual amenities of the area, such as to warrant a refusal of retention permission.

7.4. Other Issues

7.4.1. Devaluation - the appellants contend that the proposed development results in the devaluation of their property. Having regard to the assessment and conclusions set out above, I am satisfied that the proposed development would not seriously injure the amenities of the appellants' property to such an extent that would adversely affect its value, or the value of property in the vicinity.

7.4.2. Tree felling – the appellants' appeal submission refers to breaches of the Wildlife Acts in respect of tree felling. I note that the issue raised is regulated by other code(s) and as such I consider that this issue is outside the scope of this appeal.

7.4.3. Surface Water Drainage – I am satisfied that the proposed treatment of surface water run-off from the structure is adequate in the context of the constraints of the appeal site and the nature and extent of the development proposed, specifically I note that the use of the planters will reduce the rate of run-off.

7.4.4. Development Contributions (New Issue) – Section 6.1 of the adopted Louth County Council Development Contribution Scheme, 2016-2021, provides an exemption/no charge in respect of garages and garden sheds, which in my opinion the proposal is analogous with. This section is however prefaced with a note stating that 'exemptions shall not apply to permissions for retention', and as such I consider that the proposal

would attract a development contribution, should the Board be minded to grant retention/permission for the proposal.

7.5. Appropriate Assessment

7.5.1. Having regard to the nature and limited scale of the proposed development and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

8.0 Recommendation

8.1. Having regard to the above it is recommended that retention and permission is granted based on the following reasons and considerations and subject to the attached conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Louth County Development Plan 2021-2027, and to the prevailing pattern and character of existing development in the vicinity and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the development as proposed would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be retained/carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the plans and particulars received on the 29 th November 2022, 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
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	<p>Authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The structure hereby permitted shall be used solely for use incidental to the enjoyment of the main dwelling and shall not be sold, rented or leased independently of the main dwelling and shall not be used for the carrying on of any trade, business or commercial/industrial activity. The structure shall not be used for the purposes of independent habitation.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>The windows on the west elevation of the structure hereby permitted shall be comprised of, and permanently maintained with obscure glazing, and shall be fixed/non-openable.</p> <p>Reason: To protect the residential amenity of neighbouring property.</p>
4.	<p>Within 3 months of a grant of retention/permission, the applicant shall agree in writing with the Planning Authority, a scheme of landscaping along the western boundary of the site. The screen planting along the western site boundary, as indicated on <i>Drawing No. HE-22-4523-2.1</i>, shall consist of a non-deciduous variety and shall have/be maintained at a minimum height of 1.5 metres.</p> <p>Reason: To protect the residential amenity of neighbouring property.</p>
5.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the detailed requirements of the Planning Authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
6.	<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, as amended. The contribution shall be paid prior to</p>

<p>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 An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act, 2000, as amended, 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.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ian Campbell
Planning Inspector

5th June 2023