



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315874-23

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<b>Development</b>	Change of use of part of agricultural shed to home office, and retention of alterations to development permitted under Reg. Ref. 20/889.
<b>Location</b>	Ballyhays, Straffan, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	221452
<b>Applicant</b>	Michael Gowran
<b>Type of Application</b>	Permission and Retention Permission
<b>Planning Authority Decision</b>	Refuse Permission and Refuse Retention
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Michael Gowran
<b>Observer</b>	Pietro and Sabrina Macari
<b>Date of Site Inspection</b>	10 <sup>th</sup> June 2023
<b>Inspector</b>	Ian Campbell

## 1.0 Site Location and Description

- 1.1. The appeal site is located at Ballyhays, c. 1 km south of Straffan, Co. Kildare. The appeal site is located off a local access road/cul-de-sac which connects with the L-2007. The area is semi-rural in character, with a dispersed housing on large sites.
- 1.2. The appeal site accommodates a detached bungalow on a large, landscaped site. A barrel roofed structure is located in the rear garden. The appeal site is bound to the east and north by the rear gardens of neighbouring properties.

## 2.0 Proposed Development

- 2.1. The development description contained in the public notices refers to the proposed development as comprising –

*‘Change of use of part of the permitted agricultural shed (Reg. Ref. 20/889) from agricultural storage to a home office and agricultural and domestic storage.*

*Retention permission is also being sought for alterations to the development permitted under Reg. Ref. 20/889, including the addition of windows and doors to the southern, eastern and western elevations and the addition of a chimney flue on the northern elevation’.*

- 2.2. The proposal entails permission for use of a mezzanine level (c. 21 sqm) within the structure as a home office, with the ground floor to be used for agricultural and domestic storage, and retention permission for changes to the southern, eastern and western elevations, and the provision of a chimney flue.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to REFUSE permission on the 27<sup>th</sup> January 2023 for 1 no. reason which can be summarised as follows.

The proposed change of use, extensive external unauthorised alterations and the internal alterations, will change the structure from an agricultural shed to a standalone habitable building. The development would set an undesirable

precedent for similar type of development in such rural areas, and would therefore be contrary to the proper planning and sustainable development of the area.

## **Planning Authority Reports**

### **3.1.1. Planning Report**

The report of the Planning Officer notes the following:

- Extensive alterations to the exterior of the structure have occurred since retention permission was granted under PA. Ref. 20/889, including first floor windows and a chimney flue. The structure no longer resembles an agricultural shed/store and the extensive alterations proposed are not reflective of the relatively minor change in use proposed.
- A toilet appears to have been added without planning permission, this toilet was not indicated under PA. Ref. 20/889, indicating a slow change in the use of the structure from an agricultural shed to habitable use.
- The partial use of the structure as a home office would be considered a habitable space in itself.

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

### **3.1.2. Other Technical Reports**

Water Services – standard condition recommended.

Environment Section – noise condition recommended.

Roads Section – no objection noted.

Enforcement Section – recommends that conditions state reasons and that contributions shall be clearly signalled.

## **3.2. Prescribed Bodies**

Irish Water (now Uisce Éireann) – standard conditions recommended.

### 3.3. **Third Party Observations**

1 no. third party observation was received by the Planning Authority. Issues raised in the observation can be summarised as follows;

- Proposed structure has appearance of habitable structure.
- If permission is granted it would establish habitable use within the structure.
- The provision of a toilet is suggestive of habitable use.
- There is a history of unauthorised development on the site.
- The structure is larger than required for small scale farming.

### 4.0 **Planning History**

#### Appeal Site

**PA. Ref. 20/889** – Retention permission GRANTED for an agricultural shed with mezzanine level for the storage of agricultural machinery and feedstock.

### 5.0 **Policy Context**

#### 5.1. **Development Plan**

- 5.1.1. The proposed development was considered by the Planning Authority under the Kildare County Development Plan 2017-2023 however the Kildare County Development Plan 2023-2029 came into effect on the 28<sup>th</sup> January 2023 and is now the relevant development plan. The appeal site is not subject to any specific land-use zoning under the Kildare County Development Plan 2023-2029.

#### 5.2. **Natural Heritage Designations**

The appeal site is not located within or close to any European Site.

### 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 first-party appeal by Tom Phillips & Associates, on behalf of the applicant Michael Gowran, against the decision to refuse permission and retention permission. The grounds for appeal may be summarised as follows;

#### Background:

- The parent permission for the shed (PA. Ref. 20/889) was a retention application which was lodged without prejudice to the fact that the structure erected at that time was exempted development. The application was made to remove any doubt in relation to the planning status of the shed as the enforcement action had arisen out of a complaint made by an adjoining neighbour.
- The shed as permitted under PA. Ref. 20/889 was completed and used as permitted, and has never been used for any other purpose than what was permitted (i.e. an agricultural store).
- The proposal consists of the installation of windows in three elevations of the shed (to let in natural light) and the erection of a flue for a wood burning stove (to heat the shed). None of the windows are visible from outside the landholding and the shed looks exactly like what it is, a shed. Separately the permission seeks to change the use of a small part of the shed (the mezzanine area) from agricultural storage to a home office. The shed is an ancillary building used by the applicant to support the enjoyment of his property.
- The shed was originally designed for hobby farming. Its use is strictly limited to agriculture by way of condition, which, in the context, is overly restrictive. In an attempt to ensure no further enforcement issues arise with the structure,

permission was also sought to allow the balance of the shed to be used for the storage of domestic materials ancillary to the enjoyment of the house, and not to be restricted exclusively for agricultural materials. This is required as the applicant does not have a separate garage. This is neither unusual nor unreasonable.

Refusal Reason:

- The reason for refusal is unreasonable and is not based on any sound or logical planning rationale.
- The shed looks like a shed when viewed from outside the lands or when inspected inside, and nothing like 'a standalone' habitable building. To refuse permission based on the appearance of a building is both subjective and without planning merit. The structure has not, and will not, be used as a residence.
- The structure is not connected to electricity, water or foul sewage, and as such it is not capable of being lived in.
- While improvement works were carried out, many of these have been reversed on foot of the warning letter. The toilet, shower radiators, heating system, kitchen cabinets and many other internal alterations were removed to demonstrate that the intended use of the structure was as a store and not a habitable structure. The proposed toilet is ancillary to the office space and is not unreasonable given the distance that the shed is from the applicant's residence. The wood burning stove, required to heat the shed, would itself normally be exempted development. Notwithstanding this, none of these changes have the effect of changing the character of the shed as permitted.
- The proposed change of use of the mezzanine to a home office will not make the building a habitable structure, in the same way as a standalone garage within the curtilage of a house does not become a habitable structure if used in part as a home office or a home gym.
- The decision of the Planning Authority is based on a misconception in relation to the intended use of the structure. It is not correct to presuppose what may happen. The applicant is not proposing to use the structure for any other

purpose other than specified in this application. Any change beyond this would clearly need to be the subject of a separate and much different planning application. The fact remains that the proposed alterations do not make the building into a residential dwelling.

- Objectives/sections of the Kildare County Development Plan 2023-2029 which support the proposed development of a home office include Section 4.8 in relation to remote working, and objectives RE P5, RE P6 and RE O52.

## 6.2. 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.

## 6.3. Observations

An observation has been received from Kieran O'Malley & Co. Ltd, Town Planning Consultants, on behalf of Pietro and Sabrina Macari, who's property 'Glenwood' abuts the appeal site to the north. Issues raised in the observation are as follows;

- The observer concurs with the assertion of the Planning Authority that the shed is slowly becoming a habitable structure, and that the refusal reason is based on a planning rationale.
- Condition No. 2 of PA. Ref. 20/889 excludes human habitation. The applicant's intention to use the structure for residential accommodation can be inferred through the extent of works which were removed on foot of enforcement proceedings. These works fulfil no clear purpose related to the permitted agricultural store use. Few agricultural sheds are so well appointed.
- The shed was not designed to be occupied for agricultural storage. There is no evidence of hobby farming at the appeal site.
- The proposed home office is the thin end of a wedge to establish habitable accommodation in the structure. The observer has no confidence that a condition limiting the extent of the home office to the mezzanine will be effective.

- No evidence was provided by the first party that the shed was exempt development, as claimed. No weight should be given to the first parties claim that the shed has only ever been used as an agricultural store.
- The first party highlights Development Plan policy, including policy regarding agriculture, which is supportive of the proposal, however there is no evidence of such activity on the site.

## 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:

- Refusal Reason 1
- Appropriate Assessment

### 7.2. **Refusal Reason 1**

7.2.1. The Planning Authorities refusal reason cites concerns in relation to the extent of the internal and external alterations, and the proposal to use the mezzanine level as a home office, which it considers will change the structure from an agricultural shed, as permitted, to a standalone habitable building.

7.2.2. The changes proposed in the retention element of the application relate to the provision of additional fenestration, which the first party contend are required to provide natural light to the structure, and also the provision of a flue to serve a stove to heat the structure. These alterations enhance the utility and internal amenity of the structure and in context of the proposal to use part of the structure as a home office I consider the alterations to be acceptable. Additionally, noting the location of the structure on the appeal site, and the distance between the structure and adjoining property, I am satisfied that the alterations undertaken do not result in any significant negative impacts on the residential amenity of property in the vicinity.



7.2.3. The first party is also seeking permission to use a mezzanine level as a home office, and to use the ground floor of the structure for agricultural and domestic storage. The provision of home offices in detached structures located in the gardens of properties is not atypical, particularly given the increase in remote working. The alterations which have been made to the structure, specifically the provision of windows and heating are not unusual for a structure accommodating a home office. The proposal includes a toilet at ground level. Given the distance to the dwelling I do not consider it unreasonable that the structure would have a toilet. I am satisfied that the proposal to change the use of the mezzanine to a home office, and to use the structure for both agricultural and domestic storage is compatible with the wider residential use of the site, and the character of the wider area. I do not agree with the Planning Authorities contention that the structure becomes a 'habitable structure' upon use of part of the shed as a home office. In my opinion, habitation occurs when a person resides a structure. In this case, the use of the structure as a home office is clearly ancillary to the primary use within the main dwelling on the site. Additionally I note that the structure does not have sleeping quarters and has no internal partition walls.

7.2.4. In my opinion the concerns of the Planning Authority and the observer are conjectural in nature, relating to the presupposed use of the structure, as distinct from what is proposed under the application. The Planning Authorities concern relate to the appearance of the structure, which it considers are akin to a house. In my opinion the structure on the appeal site retains the appearance of a large outhouse. Additionally, I note that the internal improvement works which were carried out have been removed and I consider that reference to same is therefore moot. Should the Board be minded to permit the proposed development I recommend that a planning condition is attached restricting the use of the structure to be used ancillary to the dwelling on the site.

### 7.3. **Appropriate Assessment**

7.3.1. 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 Kildare County Development Plan 2023-2029, and to the 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.	<p>The development shall be retained/carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> 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><b>Reason:</b> In the interest of clarity.</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.

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Ian Campbell  
Planning Inspector

11<sup>th</sup> June 2023