



An
Bord
Pleanála

Inspector's Report ABP 317259-23

Development	To construct shed to the rear of house.
Location	Rathscannell, Abbeydorney. Co. Kerry.
Planning Authority	Kerry Co. Council.
Planning Authority Reg. Ref.	23/140.
Applicant(s)	Stephen O' Connor.
Type of Application	Permission.
Planning Authority Decision	To Grant Permission
Type of Appeal	Third Party
Appellant(s)	John Lawlor.
Observer(s)	None.
Date of Site Inspection	October 12th, 2023.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located in the townland of Rathscannell and c.3km north of Abbeydorney. Co. Kerry. It is located on the east side of the R556 regional road, from where there is communal access to the subject site, adjacent residential property and agricultural lands to the rear. The site accommodates a single-storey dwelling with single-storey outbuildings to the side. There is a large garden and gravel yard to the rear, part of which is used for the storage of old vehicles/machinery. The boundaries of the site are defined by hedgerows and planting.
- 1.2. The area is rural in character and the main land uses are agriculture and forestry. Residential development is in the form of single houses arranged in ribbon form along the local road.

2.0 Proposed Development

- 2.1. The development as described in the public notices submitted with the application proposes the development of a private shed at the rear of the existing dwelling. The shed would have a floor area of 279.36sq.m and a height of 5m. It would be finished externally in reinforced concrete and corrugated sheeting.
- 2.2. In response to a further information request made by Kerry Co. Council on April 4th, 2023, it was clarified by the applicant on April 12th, 2023 that the shed was for private use only for applicant's hobby and no toilet facilities would be provided.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the shed subject to 4 no. conditions.

Condition No. 3 – The dwelling house and shed shall remain as one integral unit under one ownership and neither property shall be disposed of as a separate entity.

Condition No 4 – The shed shall be used for domestic use and storage purposes only and not for any commercial, habitation or agricultural uses.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report notes that landscape policies and landscape designations under the development plan. The site is located within an area designated 'Rural General' which generally has a higher capacity to absorb development. The proposal would not have a negative visual impact.

The response to further information was considered acceptable. There would be no commercial element to the shed.

3.2.2. Other Technical Reports

Roads Office – raised no objection to the development and recommended a grant of permission.

County Archaeologist – There are no recorded monuments listed on the Record of Monuments and Places located in proximity to the proposed development which has previously been disturbed. No mitigation is required.

4.0 Planning History

No details of any relevant planning history have been forwarded by the planning authority.

5.0 Policy and Context

5.1. Development Plan

The operative development plan is the **Kerry County Development Plan 2022-2028**. The site lies in a rural area which is unzoned.

Section 11.6 of the plan is dedicated to Landscape. There are two landscape designations for the county which include 'Visually Sensitive Areas' and 'Rural General', with the latter considered to have a higher capacity to absorb development.

The site is located within an area designated 'Rural General' (Map B Landscape Designation) and there are no listed views or prospects in the vicinity. Under the provisions of the plan, it is stated that it is important that development in all areas be

integrated into its surroundings and that development outside of designated areas, should, in their designs take account of the topography, vegetation, existing boundaries and features of the area.

Objective KCDP11-78: Protect the landscapes of the County by ensuring that any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area. Any development which could unduly impact upon such landscapes will not be permitted.

5.2. **Natural Heritage Designations**

There are no designated sites proximate to the site.

5.3. **EIA Screening**

5.4. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- Scale of the building.
- The use of shed is not identified in planning application.
- Access to the shed is via a roadway which is used only for agricultural purposes and is in appellant's ownership (land registry documents attached).
- Potential noise and pollution from the shed depending on its use.

6.2. **Applicant Response**

- The shed is no larger than a shed granted permission on the other side of Abbeydorney.

- The shed is for private use only and will not be used for commercial purposes. No toilet facilities will be provided.
- The disputed area for access is ongoing between families for a number of years. The appellant has submitted maps that show the applicant has his own access and the boundaries are defined by fencing.
- It is unclear what noise is being referred to. The shed will be used only for repair of applicant's own machinery.

6.3. **Planning Authority Response**

No response to the grounds of appeal were submitted by the planning authority.

7.0 **Assessment**

7.1. **Introduction**

Having examined all the application and appeal documentation on file, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

I consider that the main issues that arise for determination by the Board in relation to this appeal relates to the following:

- Principle of the development
- Ownership
- Appropriate Assessment

7.2. **Principle of the development**

- 7.2.1. The applicant proposes to build a shed at the rear of his dwelling. While I would accept that the height and scale of the shed exceeds what would normally be considered a domestic shed, the applicant has indicated that the structure would be used for his hobby which involves the repair of old vehicles and machinery. This includes some large elements including a boat, small camper van, JCB and other machinery which is currently stored at the back of the site, and would be moved into the shed for repair. At the time of inspection, I did not observe any evidence that the proposed shed would be used for any commercial, agricultural, or other purpose.

- 7.2.2. The area is rural in character and is located outside those areas designated as visually sensitive in the development plan. It does not display any remarkable scenic qualities and there are no listed views or prospects in the area that would be impacted by the development. Notwithstanding this, the objectives of the plan require that new proposals are integrated into their surroundings to minimise effects on the landscape (Objective 11-78).
- 7.2.3. I consider that the site is sufficiently large to accommodate the proposed shed without having a detrimental impact on the landscape of this rural area. Its impact will be highly localised and confined to the general vicinity of the site. The most prominent views are likely to be on approaches to the site from the north, which I consider can be mitigated by effective screening and the colour of the external sheeting.
- 7.2.4. Subject to conditions requiring that the use of the shed be controlled I do not consider that the proposed shed will detract from the visual or residential amenities of properties in the vicinity. I note that while the appellant owns land to the rear, he does not reside in this area and no objections were raised by residents close to the site.
- 7.2.5. Having regard to the proposed use of the shed, I do not consider that there are any substantive issues regarding pollution or noise that would impact on adjacent amenities.

7.3. Ownership

- 7.3.1. The appellant states that the applicant has no legal right to use the roadway that runs along the north side of the site to access the proposed shed. The applicant has an existing established access from the roadway to the rear of the site and the current proposal does not alter these arrangements.
- 7.3.2. It would appear from the land registry documentation submitted with the appeal that the lands to the rear of the appeal site are owned by the appellant. It includes a right of way extending from the regional road (Folio 3647). However, the use of the right of way is not confined to the appellant and this is registered as a burden on the appellant's title documents.
- 7.3.3. The appellant also submitted land registry documents for the appeal site which suggests that the site is in the ownership of Timothy & Anne O' Connor and not the

applicant. It has been clarified in the applicant's response to the grounds of appeal that the site is in the ownership of the applicant's parents.

- 7.3.4. I note that the adjoining house to the north was granted planning permission in 2006 (Reg Ref No 4416/05). It proposed access from the right of way, creating a communal access with the appeal site, which was accepted by the planning authority. I could not find any evidence on the file that the appellant contested the applicants right to use this means of access.
- 7.3.5. The planning authority was satisfied that the applicants demonstrated sufficient legal interest to make the application. From my inspection of the site, I noted that there are no circumstances on the site which would prevent the carrying out of the proposed development within the red boundary line indicated on the submitted drawings or that would prevent the continued use of the established right of way to the lands at the rear.
- 7.3.6. I draw the attention of the Board to the Development Management Guidelines for Planning Authorities (DoEHLG, 2007). The Guidelines (Section 5.13) clarify that the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land, which are ultimately matters for resolution in the Courts.
- 7.3.7. The issue regarding who has a right of way over the access road is a legal matter and as such is beyond the scope of the appeal. I recommend, should the Board be minded to grant permission for the development that the applicants attention be drawn to the provisions of section 34(13) of the Planning and Development Act 2000, as amended.

7.4. Appropriate Assessment Screening

- 7.4.1. Having regard to the nature and scale of the proposed development, the absence of emissions therefrom, and the distance from any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 Recommendation

- 8.1. On the basis of the above assessment, I recommend that permission for the development be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1. Having regard to the established use of the site for residential purposes and the proposed use of the shed, it is considered that subject to compliance with the conditions set out below, the proposed development would not detract from the visual or residential amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 12th day of April 2023 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>Reason: In the interest of clarity.</p>
2.	<p>The shed shall be used solely for purposes associated with the use of the dwelling house and shall not at any time be used for commercial, industrial or agricultural purposes.</p> <p>Reason: In the interests of residential amenity.</p>
3.	<p>The existing dwelling house and the proposed shed shall remain as an integral unit under one ownership and the shed shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.</p> <p>Reason: In the interests of residential amenity.</p>
4.	<p>Details of the external finishes of the proposed development included the colour of external sheeting, which shall be dark green in colour shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	Reason: In the interest of visual amenity.
5.	<p>The northern boundary of the site shall be planted with a continuous hedge of indigenous species (e.g., holly, hawthorn or beech) extending from the rear access to the dwelling to the back of the site. Details of the proposed planting to include details of species, planting intervals and a timescale for implementation shall be submitted to and agreed in writing with the planning authority prior to the commencement of any development on the site.</p> <p>Reason: In the interests of visual amenity.</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.

Breda Gannon
 Planning Inspector

18th October 2023