



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319142-24

<b>Development</b>	Retention for development that consists of the (1) retention of existing garage entrance and concrete driveway, (2) retention of existing garage, (3) change of use from commercial facility/garage to be used for personal use storing personal vehicles and for storing personal belongings.		
<b>Location</b>	Ballynahown, Kilmallock, Co. Limerick.		
<b>Planning Authority Ref.</b>	23/581		
<b>Applicant(s)</b>	Richard Penny.		
<b>Type of Application</b>	Retention	<b>PA Decision</b>	To Refuse Permission.
	Permission.		
<b>Type of Appeal</b>	First Party.	<b>Appellant</b>	Richard Penny.
<b>Observer(s)</b>	None.		
<b>Date of Site Inspection</b>	2 <sup>nd</sup> August, 2024.	<b>Inspector</b>	Aiden O'Neill.

#### Context

##### 1. Site Location/ and Description.

The site, c. 0.3244ha in area, for which retention permission is sought is located in a rural area to the side (west) and rear (south) of a large two-storey detached dwelling at the western end of a cluster of 5no. dwellings, to the south of the

L51205 cul-de-sac, c. 590m west of its junction with the R512, c. 4.10km south of Kilmallock.

It comprises an existing single-storey building, stated to be a garage, and external yard, accessed via a concreted entrance roadway, and a loose gravel surface at the junction with the public road. Sightlines are achieved in an easterly direction, but are restricted by existing trees/hedgerow to the west.

On the day of the site visit, the garage was in use as a furniture workshop, with workshop table, and holzher sprint 1305 edgebander machine. Shelving units were under construction. A car was also parked inside the garage.

## **2. Description of development.**

- Permission is sought for the retention of existing garage entrance and concrete driveway; retention of existing garage; change of use from commercial facility/garage (stated to be in use as a timber workshop) to be used for personal use storing personal vehicles and for storing personal belongings.
- The existing single-storey garage to be retained is c. 356m<sup>2</sup> in area. It comprises a larger building, c. 5.546m in height to ridge level, with Kingspan or similar cladding and lower plastered block wall, and a smaller timber clad structure, c. 3.36m in height to ridge level. There are 2no. roller shutter doors on the northern elevation, as well as a smaller entrance door.
- The concrete driveway is c. 60m in length to the edge of the garage.
- There is a low level wall and trees/plants/shrubs separating the garage with the existing dwelling.
- The application includes a letter from the applicant's agent stating that the intended use of the garage is to store vehicles, bicycles and personal belongings. It is stated that the vehicles to be stored include a campervan, caravan, and jeep, and mountain bikes. It is also hoped to preserve and store potential future vintage cars. It is also stated that no commercial activities will take place within the structure and the applicant is in the process of winding down his business, and relocating it to Kilfinane.

- The application was lodged on 1<sup>st</sup> December, 2023 (previous application lodged on 24<sup>th</sup> November, 2023 was invalidated), and the decision to refuse permission was dated 31<sup>st</sup> January, 2024.

### **3. Planning History.**

The development to be retained has been subject to the following planning history:

DC-238-22 Enforcement Notice served in relation to a commercial facility at the rear of the property.

DC-328-04 Enforcement Notice leading to a Court Order to remove the unauthorised structure. A stay of one year was agreed. It is stated in the planner's report that this case is closed.

ABP Ref. No. PL 13.120276 (PA Ref No. 00/119): Permission for the retention and completion of a timber workshop and store together with construction of new entrance Ballynahown, Kilmallock, Co. Limerick was refused by Limerick County Council on 16<sup>th</sup> June, 2000, and the refusal was upheld on appeal on 25<sup>th</sup> January, 2001 for the following reasons:

- (1) It is considered that the operation of a furniture workshop in close proximity to existing residences would seriously injure the amenities of these properties and depreciate their value by reason of noise and general disturbance and would, therefore, be contrary to the proper planning and development of the area.
- (2) The proposed development would endanger public safety by reason of traffic hazard because the site is located on a narrow sub-standard road and the traffic movements generated by this development would interfere with the safety and free flow of traffic on that road and at a junction of that road with the R512 where sight lines are restricted.

PA Ref. No. 89/293 Permission granted for a two-storey dwelling, garage, entrance and installation of septic tank.

### **4. National/Regional/Local Planning Policy (see attached)**

- Section 2 of Chapter 5 of the Limerick Development Plan 2022-2028 sets out the Planning Authority's enterprise and employment policies, which are generally consistent with national and regional planning policy.
- Section 5.8.15 addresses Rural Enterprise and Employment Opportunities. The Plan seeks to support employment and careers in rural areas and for Local Authorities to bring forward proposals for the development of a policy on the Night Time Economy, which will support the revitalisation of our rural towns, as well as our larger urban centres and cities, in the post Covid-19 recovery.
- The Planning Authority will balance the requirement to protect the sensitive nature of the rural area with the requirement to enable enterprise development.
- Policy objective ECON O20 in relation to the Location of Industry or Enterprise in Brownfield Sites states that it is an objective of the Council to facilitate industry or enterprises in brownfield sites with previously established industrial or commercial use, or derelict sites in a commercial, industrial or mixed-use area, subject to the following considerations: a) The use should be appropriate to the scale and context of the site, taking into account traffic and other impacts on local infrastructure and neighbouring land uses and amenities; b) Structures of conservation merit should be re-used and not replaced; c) The works are necessary for the proposed economic activity or activities.
- Policy objective ECON O35 a) in relation to Rural Development state that it is an objective of the Council to facilitate the development of acceptable rural enterprises and to minimise pollution from agricultural and industrial sources by means of development management and water pollution legislation.
- Objective TR 037 seeks to ensure that development onto a non-national public road meets the appropriate design and safety standards.

## **5. Natural Heritage Designations**

- The Mountrussell Wood pNHA (002088) is located c. 3.7km to the south-west of the proposed development site. Ballyhoura Mountains SAC (002036) and Ballyhoura Mountains pNHA (002036) are located c. 4.27km to the south of the proposed development site.

## **Development, Decision and Grounds of Appeal**

### **6. PA Decision.**

The Planning Authority decided to refuse outline permission by Order dated 31<sup>st</sup> January, 2024 for 2no. reasons as follows:

1. The proposed development has been subject to enforcement proceedings (DC-328-04) that resulted in a Court Order being issued to the applicant, which required the removal of the unauthorised workshop. This Order has not been complied with to date. The proposed development, if permitted, would be contrary to the proper planning and sustainable development of the area.
2. The proposed development and the precedent it would set for similar types of development would conflict with the provisions of the Limerick Development Plan 2022-2028 namely ECON 020 – Location of Industry or Enterprise in Brownfield Sites and Objective ECON 035 – Rural Development. The form, scale and location of the workshop is not regarded as acceptable development in an unserved rural location and would conflict with the provisions of the Development Plan which seeks to provide commercial development in or adjacent to settlements where infrastructure can be provided in line with the principles of sustainable development.

The planner's report dated 30<sup>th</sup> January, 2024 is the basis for the Planning Authority's decision to refuse outline planning permission.

The planner states that the previous enforcement file at the site, DC-328-04, relating to this structure went before the courts and the applicant was ordered to remove the unauthorised workshop. This has not been completed to date. The order of Kilmallock District Court has not been complied with and it is concluded this proposal is not acceptable in principle.

It is also stated that it is a relatively large shed (356m<sup>2</sup>) to the rear of the dwelling and it is noted in the enforcement file that it is still the applicant's place of work, the number of employees has been cut down. The scale of the shed is not appropriate

for the curtilage of a dwelling. It is apparent that the workshop has been extended recently by 95m<sup>2</sup>.

Sight lines or stopping distances from the entrance to be retained are not shown on the site layout plan submitted, and there is an independent driveway that serves the shed. It is stated that this is a substandard road and that the Planning Authority seeks to limit access to points onto such routes which are deficient in terms of width.

It is concluded that the structure must be removed from the site in accordance with the Court Order.

## **7. First Party Appeal.**

The Applicant's appeal sets out the following grounds:

- No further commercial activities are planned within this structure. The applicant is prepared to provide a sworn affidavit to support the appeal.
- Enforcement proceedings under DC-328-04 were in relation to an unauthorised commercial development, necessitating the removal of a commercial workshop. The Court Order of 2004 pertains specifically to a commercial use and would only be relevant if the structure continued to be used for commercial activities.
- The current application seeks to transition the use of the garage to a personal use.
- The workshop was constructed between 1997 and 2000. The refusal of permission (PA Ref. No. 00/119) and subsequent enforcement proceedings in 2004 led to the requirement for the commercial workshop to be removed.
- An application for a new workshop (PA Ref. No. 08/4) at No. 2 Kilmallock Industrial Estate, Bruree Road, Kilmallock, was successful. The financial crash of 2008 impacted the plan to relocate.
- Commercial rates have been paid on the commercial workshop since 2007.
- The latest Enforcement Notice dated 5<sup>th</sup> February, 2023, the applicant was requested to cease all commercial activities. The applicant began to plan moving his business to Kilfinane, and to seek to retain the structure for

personal use only. No vehicle repairs has taken place at the garage as had been stated in the 2023 Enforcement Notice.

#### **8. PA Response**

- None on file.

### **Environmental Screening**

#### **9. EIA Screening**

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

#### **10. AA Screening**

Having regard to the modest nature and scale of development, and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **2.0 Assessment**

2.1. Having examined all the application and appeal documentation on file, and having regard to relevant policy, I consider that the main issues which require consideration in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

2.2. The main issues are as follows:

- Planning Status of the existing garage
- Compliance with Development Plan policies

2.3 Planning Status of the existing garage

- 2.3.1 The existing garage to be retained is subject to a current Enforcement Notice, DC-238-22 in relation to a commercial facility. It was also subject to a previous Enforcement Notice, DC-328-04, which led to a Court Order from Kilmallock District Court to remove the unauthorised structure. While a stay of one year was agreed, the unauthorised structure remains in situ.
- 2.3.2 A previous application, PA Ref No. 00/119, to retain and complete a timber workshop and store and construction of a new entrance was refused permission by Limerick County Council on 16<sup>th</sup> June, 2000, and the refusal was upheld on appeal, ABP Ref. No. PL 13.120276, on 25<sup>th</sup> January, 2001.
- 2.3.3 There is, therefore, no permission in place for the garage or its commercial use, or the entrance from the public road, or the driveway.
- 2.3.4 The applicant seeks permission to retain the garage, including the entrance from the public road and the driveway, and to retain the change of use from commercial facility/garage to a garage to be used for personal storage.
- 2.3.5 The applicant's appeal states that no further commercial activities are planned within the structure, and that a sworn affidavit can be provided. The appeal also states that the Court Order of 2004 pertains specifically to a commercial use and would only be relevant if the structure continued to be used for commercial activities.
- 2.3.6 However, on the day of the site visit, the garage was in use as a furniture workshop. Shelving units were under construction by 2no. persons on a workshop table. Incomplete shelving units were stored in the vicinity of the workshop table. A holzher sprint 1305 edgebander machine was located adjacent to the workshop table.
- 2.3.7 In this context, and notwithstanding the applicant's appeal, it is clear that the unauthorised garage continues to be used as an unauthorised workshop.
- 2.3.8 Refusal of planning permission is recommended on the basis that the site is currently subject to an Enforcement Notice (DC-238-22) in relation to an unauthorised commercial facility, and was previously subject to an Enforcement Notice (DC-328-04) that resulted in a Court Order being issued to the applicant requiring the removal of the unauthorised workshop on site. This Order has not been complied with to date. It is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.



## 2.4 Compliance with Development Plan policies

2.4.1 Section 2 of Chapter 5 of the Limerick Development Plan 2022-2028 sets out the Planning Authority's enterprise and employment policies, which are generally consistent with national and regional planning policy.

2.4.2 Section 5.8.15 of the Plan addresses Rural Enterprise and Employment Opportunities.

2.4.3 Development Management policy (Chapter 11 of the Plan) provides for the development of rural enterprise. Section 11.6.7 sets out the policies for Small Scale Home-based Businesses in Rural Areas. This states that in general, commercial activities should be accommodated in towns and villages where existing services and facilities are available. This is endorsed by policy objective ECON 020 in relation to the Location of Industry or Enterprise in Brownfield.

2.4.4 However, the Planning Authority recognises that there are circumstances where there is a need for self-employed and small-scale commercial activities, located adjacent to and/or within the curtilage of existing houses in the open countryside. This is endorsed by policy objective ECON O35 in relation to Rural Development.

2.4.5 However, the Planning Authority and the Board have already determined that a timber workshop is not a suitable use at the site (ABP Ref. No. PL 13.120276 (PA Ref No. 00/119)) as it would seriously injure the amenities of properties in the vicinity, would depreciate their value by reason of noise and general disturbance, and would also endanger public safety by reason of traffic hazard.

2.4.6 As noted above, the site is currently subject to an Enforcement Notice (DC-238-22) in relation to an unauthorised commercial facility. It was also previously subject to an Enforcement Notice (DC-328-04) that resulted in a Court Order being issued to the applicant requiring the removal of the unauthorised workshop on site.

2.4.7 Furthermore, policy objective TR 037 a) seeks to ensure that any development involving new access to a nonnational public road meets the appropriate design and safety standards.

2.4.8 As noted above, while sightlines to the east of the entrance to be retained are achieved, sightlines to the west are restricted by existing trees/hedgerow. In the absence of any information to confirm otherwise, it would appear that these lands

are outside the control of the applicant, being located outside the red line boundary as depicted on the Site Location Map that accompanied the planning application.

2.4.9 In this context, it is considered that the proposed development materially contravenes policy objectives ECON 020, ECON 035 and TR 037 a) of the Plan.

2.4.10 The form, scale and location of the workshop is not regarded as acceptable development in an unserved rural location and would conflict with the provisions of the Development Plan which seeks to provide commercial development in or adjacent to settlements where infrastructure can be provided in line with the principles of sustainable development.

2.4.11 In addition, it is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a road at a point where sightlines are restricted in a westerly direction.

### **3.0 Recommendation**

- 3.1 I recommend that permission for the development be refused for the following reasons and considerations.

### **4.0 Reasons & Considerations**

1. On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a structure which is currently subject to an Enforcement Notice (DC-238-22) in relation to an unauthorised commercial facility. It was previously subject to an Enforcement Notice (DC-328-04) that resulted in a Court Order being issued to the applicant requiring the removal of the unauthorised workshop on site. This Order has not been complied with to date. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.
2. The proposed development and the precedent it would set for similar types of development would materially contravene with the provisions of Policy Objective ECON 020 – Location of Industry or Enterprise in Brownfield Sites and Policy – and Objective ECON 035 – Rural Development - of the Limerick Development Plan 2022-2028. The form, scale and location of the workshop is not regarded as acceptable development in an unserved rural location and would conflict with the provisions of the Development Plan which seeks to provide commercial development in or adjacent to settlements where infrastructure can be provided in line with the principles of sustainable development.
3. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a road at a point where sightlines are restricted in a westerly direction. In this regard, the proposed development would materially contravene Objective TR 037 a) - Land Uses and Access Standards of the Limerick Development Plan 2022-2028 which requires that accesses onto non-national roads meet the appropriate design and safety standards.

## **Relevant Policies**

### **Limerick Development Plan 2022-2028**

Section 2 of Chapter 5 of the Limerick Development Plan 2022-2028 sets out the Planning Authority's enterprise and employment policies, which are generally consistent with national and regional planning policy.

Section 5.8.15 addresses Rural Enterprise and Employment Opportunities. In implementing the objectives below, the Planning Authority will have regard to the provisions of the Government's Rural Development Policy 2021-2025 - Our Rural Future. The vision of this policy is for a thriving rural Ireland, which is integral to our national economic, social, cultural and environmental wellbeing and development. The Plan seeks to support employment and careers in rural areas and for Local Authorities to bring forward proposals for the development of a policy on the Night Time Economy, which will support the revitalisation of our rural towns, as well as our larger urban centres and cities, in the post Covid-19 recovery. Development Management policy provides for the development of rural enterprise, related to the area's amenity potential and many enterprise/employment uses are either 'Open for Consideration' or 'Permitted in Principle' in the rural areas of the County. The Planning Authority will balance the requirement to protect the sensitive nature of the rural area with the requirement to enable enterprise development. Having regard to the location and potential nature of developments facilitated by policies promoting rural enterprise and economic development, including rural tourism, proposals for development shall have regard to Policy TR P12 Safeguard the Capacity of National Roads and Objective TR O39 National Roads in Chapter 7: Sustainable Mobility and Transport.

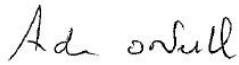
Policy objective ECON O20 in relation to the Location of Industry or Enterprise in Brownfield Sites states that it is an objective of the Council to facilitate industry or enterprises in brownfield sites with previously established industrial or commercial use, or derelict sites in a commercial, industrial or mixed-use area, subject to the following considerations: a) The use should be appropriate to the scale and context of the site, taking into account traffic and other impacts on local infrastructure and

neighbouring land uses and amenities; b) Structures of conservation merit should be re-used and not replaced; c) The works are necessary for the proposed economic activity or activities.

Policy objective ECON O35 in relation to Rural Development states that it is an objective of the Council to a) Facilitate the development of acceptable rural enterprises and to minimise pollution from agricultural and industrial sources by means of development management and water pollution legislation. b) Encourage the redevelopment of vacant commercial units for enterprise and industry creation including Kantoher Business Park, Castlemahon and other identifiable rural commercial brownfield sites, subject to normal planning and environmental criteria. c) Promote the development of our rural Towns and Villages as an important focus of restaurant, leisure and evening uses - subject to the safeguarding of surrounding residential amenity and environmental criteria.

Objective TR 037 Land Uses and Access Standards states that it is an objective of the Council to: a) Ensure that any development involving new access to a nonnational public road, or the intensification of use of an existing access onto a non-national public road meets the appropriate design and safety standards. b) Ensure that on roads that are substandard, either in terms of their width, (less than 3m), alignment, surface condition or junction with the nearest main road, development for one off rural housing will only be considered in exceptional circumstances. This includes applicants who have a demonstrable social need to live on the particular road, where no alternative site is available, or where the only alternative access available is onto a strategic regional road as designated in the Development Plan.

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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Aiden O'Neill  
Planning Inspector

10<sup>th</sup> August, 2024