



An  
Bord  
Pleanála

## Inspector's Report

**ABP- 319188-24**

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<b>Development</b>	Retention of two garden sheds in apartment complex
<b>Location</b>	Mollyware Court, Courtown Road, Kilcock, Co. Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	23588
<b>Applicant(s)</b>	Terry McCahey & Don Carstea
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Grant subject to 4 no. conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Kate Vaughan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	24 <sup>th</sup> April 2024
<b>Inspector</b>	Bernard Dee

## **1.0 Site Location and Description**

- 1.1. The appeal site measuring approximately 0.16ha in area is located within the grounds of Mollyware Court which is a two storey six apartment development located on Courtown Road in Kilcock. The site is located approximately 280m SW of the bridge over the Royal Canal in Kilcock.
- 1.2. The area is suburban in character and Courtown Road (R125) bounds the north of the site, Penwall Lodge the western boundary, existing residential development lies to the south of the site and a Health Centre lies to the east of the appeal site.
- 1.3. The two sheds are located at the southern extremity of the site and largely screened from the apartment building by planting and from views from the public realm, Penwall Lodge to the west of the appeal site, by a boundary wall with some metal railing sections approximately 2m in height.

## **2.0 Proposed Development**

- 2.1. Retention permission is sought for two storage sheds which are used both individually and communally for the storage of gardening tools, bicycles, bee keeping equipment and a motorcycle. The sheds are metal clad and metal sheet roofing.
- 2.2. From the drawings submitted to the Planning Authority the larger of the two sheds has an area of 16m<sup>2</sup> and measures 3.1m x 5.9m with a maximum roof height of 2.4m while the smaller shed has an area of 6.4m<sup>2</sup> and measures 2.6m x 3.1m with a maximum roof height of 2.4m. A combined storage area of approximately 22.4m<sup>2</sup> is sought to be retained.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Retention permission for the development was granted on 8<sup>th</sup> February 2024 subject to 4 no. conditions.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- The Planner's Report on file contains Further Information and Clarification of Further Information requests relating to the current location of the bin stores with reference to the parent permission location (Condition 20 of Ref. 02/1752) and the legal interest of the applicant to make the retention application (Further Information request), and details of a waste management strategy operating at the apartment complex as per Policy Refs. WM-7 and WM-15 of the Development Plan (Clarification of Further Information request).
- Following the two sets of additional information, the Planner's Report notes that the two sheds for which retention permission is sought are located to the rear of the apartment building in an area marked on Ref. 02/1752 drawings as being the location of the bin store located to the south of the apartment building.
- The Planner's Report notes that there is a communal bin system in place instead of multiple individual bins as originally proposed and that the bin store was relocated to the east of the site along with wall mounted bicycle storage.
- The report notes that the sheds are used for storing personal and communal items such as gardening tools, bicycles, bee keeping equipment and a motorcycle.
- The Planner's Report concludes that subject to compliance with conditions the retention of the storage sheds is in accordance with the proper planning and sustainable development of the area.
- Neither EIA nor AA is required in relation to the development for which retention is sought.

### 3.2.2. Other Technical Reports (following FI and CFI information)

- Water Services - no objections subject to conditions.
- Environment Section – no objections subject to conditions.

### 3.2.3. Prescribed Bodies

- Irish Water - no objections subject to conditions.

#### 3.2.4. Observations

- Submission received from Kate Vaughan who is the Third Party appellant in this case.

### 4.0 Planning History

#### 4.1. On the Appeal Site

- Ref.02/1752 - was a grant of permission on 30<sup>th</sup> January 2003 subject to 37 no. conditions for the apartment building (6 no. apartments) currently on the appeal site. In the site layout drawing of this parent permission, the area where the two storage sheds are currently located are designated as the bin storage area. Condition 20 of this permission required that *“bicycle parking stands and bin storage shall be provided as proposed. Reason: In the interests of the proper planning and development of the area”*.
- Ref. UD8217 – there is a current enforcement file on the two sheds for which retention permission is sought.

#### 4.2. In the Vicinity of the Site

- No planning history proximate to the appeal site and relevant to the issues raised in the appeal.

### 5.0 Policy and Context

#### 5.1. Development Plan

Kildare County Development Plan 2023 - 2029 is the statutory plan for the area.

Chapter 15 – Development Management Standards

15.4.13 Domestic Garage / Store / Home-Work Pod / Garden Room The development of a domestic garage/store/home-work pod /garden room for use ancillary to the enjoyment of a dwelling house will be considered subject to compliance with the following standards:

- The domestic garage/store/home-work pod /garden room shall be single storey only, with a maximum gross floor area of 40m<sup>2</sup> and a maximum ridge height of 5m.

- The unit shall generally be located behind the front building line of the existing dwelling.
- In urban areas, the development will be assessed on the scale of the space surrounding the dwelling and any impact on neighbouring properties.
- The design and external finishes of the unit shall generally be in keeping with that of the dwelling house.
- The unit shall only be used for purposes ancillary to the enjoyment of the dwelling house and not for human habitation.
- The Planning Authority may consider exceptions to the criteria above having regard to the need for the development and the location and characteristics of the subject site.

#### Kilcock LAP 2015-2021

The appeal site is located in an area zoned B – Existing Residential/Infill - To protect and improve existing residential amenity; to provide for appropriate infill residential development; to provide for new and improved ancillary services. This zoning principally covers existing residential areas. The zoning provides for infill development within these existing residential areas. The primary aims of this zoning objective are to preserve and improve residential amenity and to provide for further infill residential development at a density that is considered suitable to the area and to the needs of the population. Such areas, particularly where bordering the commercial centre, will be protected from the pressure of development of higher order uses such as retail and offices.

#### 5.2. Natural Heritage Designations

The following natural Heritage designations are located in the vicinity of the appeal site:

- Rye Water Valley / Carton SAC (001398) and pNHA (001398) are located 6.4km to the east of the appeal site.
- The Royal Canal pNHA (002103) is located approximately 200m NE 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 significant environmental sensitivity in the vicinity/ 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

The Third Party appeal, in summary, puts forward the following relevant planning grounds of appeal:

- The appeal site is located in an area zoned for existing residential and infill development and the two sheds which are of a commercial/industrial appearance and do not protect or improve the residential amenity of the area.
- The two sheds are not a communal resource and not owned by the management company but rather a resource enjoyed by the two applicants who alone have access to the locked sheds which breaches the communal use of the sheds for purposes ancillary to domestic use (apartments) specified by Condition 3 of the grant of retention permission..
- The sheds are not ancillary to the apartment development and are contrary to the residential zoning objective of the area.
- The sheds occupy an area designated as bin storage which has caused the bin store to be relocated to the side of the apartment building and are not readily acceptable due to parking spaces being in the way.
- The open space area, bin store and bicycle parking area are all materially different to those permitted by Ref. 02/1752 and contrary to the provisions of Condition 20 of this parent permission.
- The applicants have not sought retention permission for these revisions to the site layout rendering these alterations unauthorised development.

- The sheds for which retention permission is sought are visually obtrusive and have a detrimental impact on the visual amenity of the area.
- There is no need for these sheds as sheds for each apartment are provided along the western boundary of the site as well as a shed for management company use.
- The sheds may be used for commercial purposes which would not be in accordance with planning regulations.

The appellant also disputes the legal right of the applicants to make the retention application but as this is a civil matter it is not a legitimate ground of appeal for the Board's consideration.

## 6.2. First Party Response

In summary, the First Party responds with the following points:

- The sheds are not being used for commercial purposes or used to store flammable materials and the site of the sheds was previously used as a dumping ground.
- The open space in front of the sheds is a community area which is enjoyed by the residents of the apartment building.
- The sheds do not have an adverse impact on the visual or residential amenity of the area.
- The unauthorised nature of the sheds has been regularised by the grant of retention permission.

## 6.3. Planning Authority Response

- The Planning Authority has reviewed the content of the Third Party appeal and asks that the Board uphold the retention permission as granted.

## 7.0 Assessment

- 7.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, 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.
- 7.2. The primary planning issue therefore is whether the retention of the sheds would have an adverse impact on the visual and residential amenity of the area due to their location, scale, design and use. The issue of AA Screening is also addressed in this assessment.
- 7.3. Impact on Amenity
  - 7.3.1. It is the appellants case that the sheds are inappropriate at this location and visually obtrusive and do not serve all the residents of the apartment building. Further, the Third Party state that the use of the sheds may be commercial in nature which would be contrary to the zoning of the area.
  - 7.3.2. The Planning Authority, by virtue of their positive decision on the retention application, feel that the sheds do not have an adverse impact on the visual or residential amenity of the area.
  - 7.3.3. The sheds which are the subject of this appeal are relatively small and visually unobtrusive in their location given the screening from the public realm provided by boundary walls and planting. The materials and colour of the sheds is relatively neutral and is not obtrusive in terms of its impact on the residential amenity of the area.
  - 7.3.4. The Third Party has overstated the visual impact of the sheds on the apartment building and on the surrounding area and I do not believe that the Board should refuse retention permission on this ground of appeal.
  - 7.3.5. The appellant's claim that the sheds are in breach of the parent permission Ref. 02/1752 as the area which the sheds occupied was specified as the bin storage area and that the new bin storage location is now unauthorised and Condition 20 of the parent permission is also breached by the retention of the sheds.



- 7.3.6. Should the Board grant retention permission in this instance then the planning status of the sheds will be regularised. The planning status of the relocated bin area or the redesigned open space is not within the description of development for the retention application and therefore not within the scope of this assessment to comment upon.
- 7.3.7. The issue of the potential commercial use of the sheds as opposed to a communal use ancillary to the apartments is speculative and not based on any evidence submitted with the appeal. Accordingly, this issue should not be given any weight by the Board in their assessment of this appeal. In any event a condition regarding the use of the sheds has been included below for the Board's consideration.
- 7.3.1. The grounds of appeal are in fact so insubstantial as to constitute a vexatious appeal and the Board may wish to consider the dismissal of this appeal under the provisions of subsections (1)(a)(i) of section 138 of the Planning and Development Act, 2000 (as amended).
- 7.4. AA Screening
- 7.4.1. Having regard to the relatively minor development proposed within an existing apartment complex and the distance from 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 individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

I recommend that retention permission be granted for the reasons and considerations set out below and subject to the conditions set down hereunder.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Kildare Development Plan 2023-2029; it is considered that, subject to compliance with the conditions set out below, the development for which retention is sought would not seriously injure the visual or residential amenities of the area, nor by virtue of the use of the sheds be incompatible with the residential context within which it is located. The proposed 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 carried out and completed in accordance with the plans and particulars lodged with the application on the 31<sup>st</sup> May 2023, as modified by submissions received on 28<sup>th</sup> August 2023 and 19<sup>th</sup> January 2024, 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 use of the sheds shall be for domestic purposes only and shall remain ancillary to the apartment units. The sheds shall not be used for human habitation, for any commercial use or for the purposes of carrying out any trade. The sheds shall not be let or sold separately to the apartment dwellings.</p> <p>Reason: In the interests of protecting the residential amenity of the area.</p>

3.	<p>All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.</p> <p>Reason: In the interest of public health.</p>
4.	<p>The developer shall pay to the planning authority a financial contribution of 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 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. The application of any indexation required by this condition 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.</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.

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**Bernard Dee**  
**Planning Inspector**

**25<sup>th</sup> April 2024**

**Appendix 1 - Form 1**  
**EIA Pre-Screening**  
**[EIAR not submitted]**

<b>An Bord Pleanála</b> <b>Case Reference</b>	ABP-319188-24		
<b>Proposed Development Summary</b>	Retention of storage sheds within an apartment complex		
<b>Development Address</b>	Mollyware Court, Courtown Road, Kilcock, Co. Kildare		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	√
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>			Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			

		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No		Preliminary Examination required
Yes		Screening Determination required

Inspector: \_\_\_\_\_

Date: 25<sup>th</sup> April 2024

Bernard Dee