



An
Bord
Pleanála

Inspector's Report ABP-319320-24

Development	Permission to indefinitely retain the existing shed and to indefinitely retain the change of use of the shed as a vehicle repair garage and all associated works.		
Location	Corluddy, Mooncoin, Co. Kilkenny, X91 YFT5		
Planning Authority Ref.	2360606.		
Applicant(s)	Shane Browner.		
Type of Application	<i>Retention Permission</i>	PA Decision	<i>Refuse Retention Permission.</i>
Type of Appeal	<i>First Party</i>	Appellant	<i>Shane Browner</i>
Observer(s)	<i>Niamh Tebay, Ann Duffin, Albert Tebay & Valerie Duffin Tebay</i>		
Date of Site Inspection	22-08-2024	Inspector	Adam Kearney

Context

1. Site Location/ and Description.

The subject 0.24 hectare site is located within the farm village of Corluddy, circa 3.5km southeast of the settlement of Mooncoin in South Kilkenny and circa 6km west of Waterford City. Within the subject site is a dwelling and 3 no. outbuildings along with a large agricultural style shed with a lean-to component. The latter structure forms the basis for this application. The property is accessed from an existing entrance from the L-7555-15. The shed for which retention is sought is located to the rear of the dwelling near the southwest boundary. The farm village configuration of the settlement consists of irregular site boundaries and ad hoc tightly clustered properties with outbuildings (of agricultural provenance) interspersed with dwellings.

2. Description of development

Permission to indefinitely retain the existing shed and to indefinitely retain the change of use of the shed as a vehicle repair garage and all associated works

3. Planning History

23/60394: Similar application to the subject application with permission sought to indefinitely retain the existing shed and to indefinitely retain the change of use of the shed as a vehicle repair garage and all associated works.

Decision: Retention Permission Refused

15/350: Retention of existing domestic garage and retention of existing ground floor extension to the rear of the existing dwelling and all associated site works.
Decision: Conditional Grant.

ENF22053: Unauthorised use of shed as vehicle repair garage

4. National/Regional/Local Planning Policy

Kilkenny City and County Development Plan Policy 2021-2027

7.3 Remote Working and Home-Based Economic Activity in Rural Areas

The trend of people working from home is continuing to increase, either through e-working or setting up a home-based economic activity. Remote working can be defined as “any business function that is conducted away from the office using modern communications and information technologies”. The popularity of working from home has increased due to advances in broadband and communication technology and the savings achieved in terms of time and commuting costs. This approach has been boosted due to the advent of the Covid-19 pandemic and the restrictions placed on society on movement and gatherings of people. The trend towards more remote working likely to grow during the lifetime of the plan.

Applications for small-scale home-based economic activity in rural areas where the occupants of an existing dwelling are employed at home will be positively considered. Home based economic activity should be sited either in converted existing farm buildings located adjacent to the main dwelling house or within the house where the use is compatible with and ancillary to the use of the dwelling as a home. The Council will facilitate new development and/or the conversion of part of a dwelling to an appropriate home-based economic activity in rural areas, where the dwelling remains as the main residence of the practitioner, and the economic use is clearly ancillary to the residential use and subject to compliance with normal planning and environmental criteria. Home based businesses, which wish to expand beyond employing the household on site, will be required to locate in a village or other area suitable to the use proposed.

13.14 - Home Based Economic Activities

It is the policy of the Planning Authority to accommodate home based activities where they will not impact on the general residential amenity of the area. Home-based activities are defined as small-scale commercial

activities, which are secondary to the use of the premises as a residence. They are permitted where the primary use of the dwelling remains residential and where the

amenity of surrounding residences is not adversely affected. The planning authority, in considering applications for such uses, will consider the following:

- The nature and extent of the work;
- The effects on the amenities of adjoining properties particularly as regards hours of operation, noise and general disturbance;
- The anticipated levels of traffic generation; and
- The generation, storage and collection of waste.

The local authority may grant a temporary permission of two/three years for home-based economic activities to facilitate on-going monitoring of the activity.

5. Natural Heritage Designations

- Lower River Suir SAC c.1.5km

Development, Decision and Grounds of Appeal

6. PA Decision.

Refuse Retention Permission

1. Having regard to the nature and extent of the work, noise, general disturbance, hours of operation, and anticipated levels of traffic generated by this development, it is considered that the development to be retained will seriously harm the residential amenity of surrounding residences. Having regard to the above and the requirements outlined in Section 13.14 – Home Based Economic Activities of the Kilkenny City and County Development Plan 2021-2027, it is considered that the proposed

development, by virtue of its nature and impact is incompatible with the surrounding land uses and will be contrary to the proper planning and development of the area.

2. The proposed change of use to be retained would materially contravene condition number 4 of planning ref 15/350 granted on the 7th of August 2015 and

would therefore be contrary to proper planning and sustainable development of the area.

3. The development to be retained has not demonstrated that appropriate sight lines can be achieved and would therefore create a of traffic hazard. The development does not accord with the access arrangement as detailed in the sight line drawing submitted under planning reference 15/350 which was for the retention of a domestic garage and existing ground floor extension to the rear of the existing dwelling. It is therefore considered that the retention of the commercial development of the scale and nature proposed would be contrary to the proper planning and development of the area.

7.0 First Party Appeal. Grounds:

- Kilkenny City and County Council have not followed due process and undue weight was given to one complainant
- Noise reports raised by a 3rd party should be independently verified.
- No opportunity given to respond to the issues raised by third party or the Planning Authority when representations were made by a local councillor on behalf of the applicant and a solicitor acting for the applicant.
- *Second reason for refusal incorrectly applied to subject shed whereas it relates to another structure*
- *Applicant was prepared to ameliorate sightlines at the entrance.*
- *Applicant not treated fairly as there are numerous other 'Home Based Economic Activities' number of planning references offered in support of assertion*
- *Third party submission from somebody who lives 10km away from the location*
- *Not afforded opportunity to respond whereas a face-to-face meeting was afforded to the complainant*
- *Questions the legality of sound recordings undertaken by the 3rd party observer ad details the stress that this action has caused*

Rebuttal of Reasons for Refusal No. 1

Maintains there is not excessive noise, disturbance or traffic and to support this assertion has provided letters from other neighbours in close proximity

Rebuttal of Reason for Refusal 2

Disputes that the proposal would materially contravene condition No. 4 of Planning Ref: 15/350. States that the subject structure was incorrectly mistaken with another structure north of the primary dwelling.

Rebuttal for Reason for Refusal No. 3

The existing entrance has operated safely for many years without incident. The road through Corluddy has a low level of traffic and there are natural traffic calming measures on both approaches

7.1 Observations

7.2 Observation from Niamh Tebay

- *Agrees with the Local Authority Decision*
- *States that they are a they person identified by the appellant as somebody who lives 10km from the site*
- *Clarifies that they live adjacent to the subject site along with parents since 2006*

7.3 Observation from Anne Duffin

- *Agree fully with refusal by PA*
- *House located 15m to the east*
- *Boundary wall 6m from workshop*
- *Due to noise cannot enjoy outdoor space*

7.4 Observation from Albert Tebay & Valerie Duffin Tebay

- *The workshop is northeast facing our property*
- *All other properties have a buffer between then and the workshop*
- *There are a number of other workshops within 4km in appropriate settings*

- *Refute insinuation that they are recording adults and children*
- *Only recording were of noise emanating from workshop activity*
- *Colour coded map accompanies submission*

8. PA Response

- *None*

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. *I have reviewed the file and visited the site, and I consider that the main issues that arise in this appeal relate to the Planning Authority's given reasons for refusal together with the concerns raised by the Third Party Observers. I consider that these can be assessed under the following broad headings:*

- *Principle of Development*
- *Impact on Residential Amenity*
- *Contravention of Condition under Planning Ref: 15/350*
- *Traffic Safety*

2.2. Principle of Development

Having reviewed the Kilkenny City and County Development Plan 2021 – 2027 I consider Section 7.3 'Remote Working and Home-Based Economic Activity in Rural Areas' is the relevant policy under which to assess the proposal at hand for retention and change of use, this section states *'Applications for small-scale home-based economic activity in rural areas where the occupants of an existing dwelling are employed at home will be positively considered. Home based economic activity should be sited either in converted existing farm buildings located adjacent to the main dwelling....'*

The area planner in their report refers solely to Section 13.14 – 'Home Based Economic Activities' the content of which is also detailed in this report and while holding some similarities to Section 7.3 I believe the thrust of this specific policy is intended for more small-scale, home-based enterprise within the home where the proposal is ancillary to its primary use as a dwelling.

In this instance the activity is carried out away from the primary dwelling within the curtilage and utilising an existing outbuilding, The activity qualifies as a rural based activity where the business owner/operator is self-employed and is repairing/servicing vehicles for people living in the wider rural area.

I consider that the proposal complies with Section 7.3 and is acceptable in principle,

2.3. Impact on Residential Amenity

My visit to the premises during normal operating hours was intentionally unannounced. Prior to entering the property, I observed the access and general situation external to the property for a period of time. I did not detect any noise and noted that traffic movements were extremely low.

Once on the premises I noted the existence of a number of cars parked in the yard area and two cars in the shed being worked on. There was another vintage car stored in the lean-to section. The only person present was the applicant working alone in the shed. I did not witness any excessive noise or activity at the time of my visit but obviously my visit was brief and did not appraise a typical whole day of operation.

While I appreciate that the configuration of Corluddy farm village is such that properties are clustered in close proximity to one another I consider the activity of a sole mechanic servicing and repairing cars should not create undue levels of noise other than the occasional use of cutting equipment or pneumatic equipment to remove wheels etc.

It is important to appreciate that such communities are located and borne out of agricultural activity, that in and of itself generates noise from livestock and machinery on an ongoing basis and which is often acceptable in the main, in terms of background noise to rural dwellers.

I am satisfied that the activity at the scale detailed in the application within normal working hours is not activity that will generate consistent excessive noise that would significantly impact on the residential amenity of neighbouring dwellings. I would however defer to a more definitive acoustic analysis to ensure consistent disturbance is not a regular occurrence at this location should complaints persist.

2.4. Contravention of Condition 15/350

Having reviewed this permission I concur with the applicant that the permission refers to a separate structure on the site along with an extension to the primary dwelling. Therefore, this reason for refusal has no merit.

2.5. Traffic Safety

The farm village is compact and served by a narrow public thoroughfare. The ambient speed is quite low due to the meandering nature of the road and ad hoc entrances dotted around the settlement. During my site visit I noted only two cars passing through the village during a ten-minute period. I consider the existing sightlines at the entrance adequate in both directions having accessed and egressed the property on foot and by car. I consider the existing entrance to be adequate for the scale of the activity involved.

3.0 Recommendation

3.1. I recommend that Retention Permission for the development be Granted.

4.0 Reasons & Considerations

- 4.1. Having regard to Section 7.3 of the Kilkenny City and County Development Plan 2021 – 2027 and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development for retention and change of use would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity and would therefore, be in accordance with the proper planning and sustainable development of the area.

1.	<p>The development shall be 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>Reason: In the interest of clarity.</p>
2.	<p>The hours of operation shall be restricted to 08:00 - 18:00 Monday - Friday. 09.00 – 18.00 on Saturdays and closed on Sundays and Bank Holidays.</p> <p>Reason: In the interests of adjoining Residential Amenity</p>
3.	<p>This permission is for a period of three years only. At the end of this period the use shall cease, unless a further period/period of indefinite duration for its continued use is granted.</p> <p>Reason: In order to further monitor potential impacts in relation to noise on residential amenity.</p>
4.	<p>The noise level arising from this development shall not exceed 55 dB(A) Leq (1 hour) with a maximum peak of 65 dB(A) between 08.00 to 18.00 hours, when measured at nearest sensitive receptors.</p>

	<p>As and when required by the Planning Authority a survey of noise levels at monitoring stations on adjacent properties (to be agreed with the Planning Authority) shall be undertaken by an agreed professional (at the expense of the developer) and the results submitted to the Planning Authority within one month of such a request.</p> <p>The results of such surveys shall include, inter alia: -</p> <ul style="list-style-type: none"> (i) Type of monitoring, equipment used, sensitivity or calibration evidence, and the methodology of the survey. (ii) Prevailing climatic conditions at the time of the survey. (iii) The time interval over which the survey was conducted. (iv) What machinery was operating at the time of the survey. <p>The results should be submitted to the Planning Authority within 2 weeks of the survey date in each case. If the noise survey has not been carried out, or the results not submitted to the Planning Authority within one month, the Planning Authority shall arrange to have such a survey carried out and the cost of the survey shall be recouped from the developer.</p> <p>Reason: In the interests of safeguarding the surrounding residential amenity.</p>
5.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p>Reason: In the interest of public health.</p>
6.	<p>All waste generated from the workshop shall be removed from the site and disposed of by holders of an appropriate waste permit.</p> <p>Reason: In the interest of the proper planning and sustainable development of the area.</p>
7.	<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</p>

	<p>and Development Act 2000, as amended. The contribution shall be paid within three months of the date of this Order 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>
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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.

Name: Adam Kearney

Planning Inspector

Date: 29-08-2024