

An  
Bord  
Pleanála

## Planning Appeal Form

AN BORD PLEANÁLA  
229735-27

ABP- \_\_\_\_\_

12 MAY 2021

Fee: € 220 Type: Cheque

Time: \_\_\_\_\_ By: Post

### Your details

#### 1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Mimi Keogh

(b) Address

Kill West, Kill, Co. Kildare

### Agent's details

#### 2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

David Mulcahy Planning Consultants Ltd

(b) Agent's address

67 Old Mill Race, Athgarvan, Newbridge, Co.  
Kildare



## Postal address for letters

3. During the appeal we will post information and items to you or to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the address in Part 1

The agent at the address in Part 2

## Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

**(a) Planning authority**

(for example: Ballytown City Council)

Kildare County Council

**(b) Planning authority register reference number**

(for example: 18/0123)

ED00851

**(c) Location of proposed development**

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

Kill West, Kill, Co. Kildare



## Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

Attached separately



## Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

## Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

## Fee

8. You **must** make sure that the correct **fee** is included with your appeal. You can find out the correct fee to include in our [Fees and Charges Guide](#) on our website.



## Oral hearing request

9. If you wish to [request the Board to hold an oral hearing](#) on your appeal, please tick the “yes, I wish to request an oral hearing” box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on [our website](#) or by contacting us.

If you do not wish to request an oral hearing, please tick the “No, I do not wish to request an oral hearing” box.

**Yes, I wish to request an oral hearing**

**No, I do not wish to request an oral hearing**

NALA has awarded this document its Plain English Mark

Last updated: April 2019.





**DM**

**DAVID MULCAHY  
PLANNING CONSULTANTS LTD**

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Company No: 493 133 Directors: D. Mulcahy & M. Mulcahy

**REFERRAL**

CONCERNING

**DOMESTIC SHED**

AT

**KILL WEST, KILL, CO. KILDARE**

Client: Mimi Keogh

10<sup>th</sup> May 2021



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## 1.0 INTRODUCTION

David Mulcahy Planning Consultants Ltd have been instructed by **Mimi Keogh** of Tully Road, Kildare Town, Co. Kildare to refer a declaration by Kildare County Council to An Bord Pleanála concerning a domestic shed at Kill West, Kill, Co. Kildare.

A declaration was sought under Section 5 of the Planning and Development Act 2000 (as amended) from Kildare County Council to establish:

*"Whether a development of a 16sq.m pitched roof domestic shed at Kill West, Kell, Co. Kildare is or is not development and is or is not exempted development"*.

Kildare County Council have declared that the shed is development and is not exempted development (Ref. ED/00851) see copy of declaration in **Appendix A**.

This referral will demonstrate that Council's declaration is wrong and that the development is exempted development.

The Council's decision was made on 20<sup>th</sup> April 2021. The four week deadline for referring the matter to An Bord Pleanála is 17<sup>th</sup> May 2021. This referral meets that deadline.

The fee of **€220** is enclosed.

Please send all future correspondence on this matter to this address.



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## 2.0 SITE LOCATION & DESCRIPTION

### 2.1 Site Location

The subject site is located in the village of Kill - see Fig No.1 below.

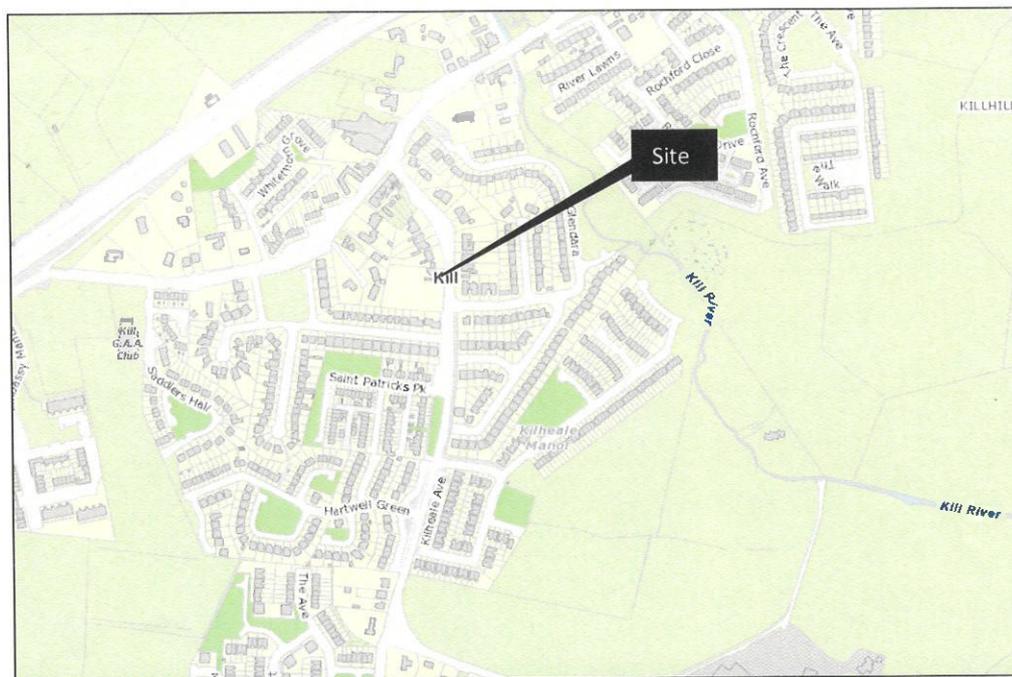
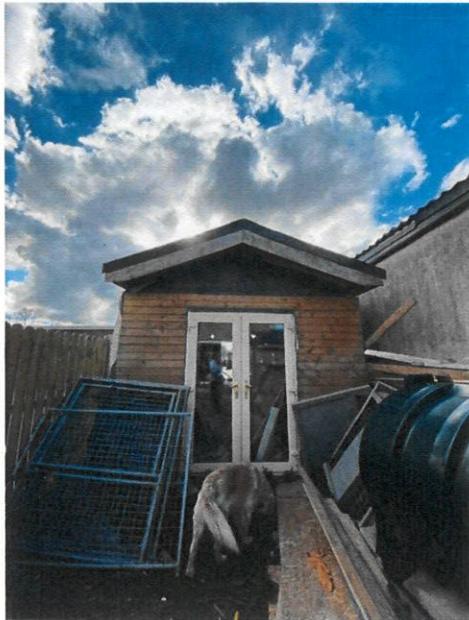


Fig No.1 Site Location (source: Myplan.ie - OSI Licence No.EN 0080915)

### 2.2 Site Context and Description

At present the site (0.0304Ha) contains a house with a recent rear extension nearing completion and a shed to the rear - see photograph of the shed below.





**Fig No.2** Shed to rear of the site

## **3.0 PLANNING HISTORY**

### **3.1 Subject Site**

#### **ABP-307975-20**

On 18<sup>th</sup> December 2020 An Bord Pleanála granted permission to Mimi Rogers for for retention of the extension to the rear of the existing semi-detached dwelling, consisting of ground floor dining room and first floor bedroom subject to conditions and **refused permission for a domestic garage to the rear for one reason as follows:**

*"Having regard to the provisions set out at Table 17.5 of the Kildare County Development Plan 2017-2023 which provides for three-bedroomed dwellings to have a minimum of 60 square metres of private open space, the configuration of the site, the extent of development to be retained on site and the residual usable private open space available, it is considered that the proposed*



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*domestic garage would result in a significant deficiency in the provision of private open space, would lead to a diminution of the residential amenity of the existing dwelling and would, therefore, result in overdevelopment of a restricted site”.*

## **4.0 RELEVANT LEGISLATION & CASE LAW**

### **4.1 Development**

Section 3(1) of the Planning and Development Act, 2000 defines 'development' as

*“the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land” – emphasis added.*

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

#### **CLASS 3**

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.
2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such



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structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.
4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.
5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

#### **4.2 Fingal County Council v. William P. Keeling & Sons Ltd. 29/07/2005, [2005] IESC 55**

The Supreme Court held in July 2005 that where a developer has made an application for permission to retain a development, this will **not prevent him from claiming at a later stage that the development is exempt**. In doing so, it overruled the 1983 Supreme Court case of Dublin v. Tallaght Block Company, where it had been stated that if a developer applies unsuccessfully for retention planning permission, he is stopped by that fact alone from resisting a later application for an order to desist unauthorised development.

In this case, the developer, William P. Keeling & Sons Limited, had partially built a bungalow when Fingal County Council applied for an order that the bungalow be demolished. The company applied three times unsuccessfully for permission to retain the development. In its arguments against the order for demolition, the company claimed that the development was exempt. The Supreme Court found that, since the statement of the law in the 1983 case was made where it



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had already been decided that the development was not exempt and where there was no considered argument or citing of relevant authority, the statement of the law in the 1983 case was not binding on it and the developer was permitted to argue that the development was exempt. The court mentioned that there may be many reasons for applying for planning permission, where it might also have been argued that the development was exempt. Such reasons included oversight, mistake, caution or an attempt to ensure that the planning position was clear where a property was being sold.

## **5.0 COUNCIL DECISION**

### **7.1 Ref. ED/00851**

A declaration was sought under Section 5 of the Planning and Development Act 2000 (as amended) from Kildare County Council ('KCC') to establish:

**WHEREAS** a question has arisen as to whether a development a 16m<sup>2</sup> pitched roof domestic shed at Kill West, Kill, Co. Kildare is or is not development and is or is not exempted development,

The Council decision was as follows:

The development is a type of development which falls within the provisions of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) as provided for under Article 6 of the Planning and Development Regulations 2001 (as amended), and that Article 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended) restricts the application of such development as Condition no. 4 of Ref. 20/554 (ABP 307975-20) provides that no development under Class 3, Part 1, Schedule 2 shall occur on the site without a prior grant of permission.



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## 6.0 ANALYSIS

### 6.1 Background

This referral seeks for the Board to determine "*Whether a development of a 16sq.m pitched roof domestic shed built in December 2019 at Kill West, Kell, Co. Kildare is or is not development and is or is not exempted development*".

### 6.2 Has Development Occurred?

There is no dispute that the development constitutes development.

### 6.3 Is the development exempt?

It is submitted to the Board that when the shed was built in December 2019 it was exempted development.

All the criteria for an exemption under the regulations are met:

1. No such structure shall be constructed erected or placed forward of the front wall of a house.	The shed is located to the rear of the house.
2. The total area of such structures constructed erected or placed within the curtilage of a house shall not taken together with any other such structures previously constructed erected or placed within the said curtilage exceed 25 square metres.	Only 16sq.m



3. The construction erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.	52.9sq.m
4. The external finishes of any garage or other structure constructed erected or placed to the <u>side</u> of a house and the roof covering where any such structure has a tiled or slated roof shall conform with those of the house.	The shed is not located to the side of the house, but to the rear. Therefore, the finishes do not have to match the existing house.
5. The height of any such structure shall not exceed in the case of a building with a tiled or slated pitched roof 4 metres or in any other case 3 metres.	The ridge height is 3.27m.
6. The structure shall not be used for human habitation or for the keeping of pigs poultry pigeons ponies or horses or for any other purpose other than a purpose incidental to the enjoyment of the house as such.	Met. Used for storage only.

We submit that the Council knew that the shed was in situ prior to the application being lodged, by reason of the fact that it was a retention application, and should have taken this into consideration when making the assessment of the section 5 application and not relied on the Board's decision in 2020 in their decision to refuse based on the Keeling case referred to above.



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## 7.0 CONCLUSION

The question before the Board is:-

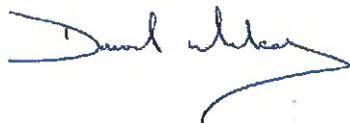
*"Whether a development of a 16sq.m pitched roof domestic shed built in December 2019 at Kill West, Kill, Co. Kildare is or is not development and is or is not exempted development".*

It is submitted to the Board that there is no dispute that development has occurred.

However, we disagree with the Council's view that the development is not exempt on foot of the decision by An Bord Pleanála to refuse permission on 18<sup>th</sup> December 2020. The shed was exempt development upon its construction in December 2019 and the fact that the shed was refused as part of a later application in December 2020 does not alter this exemption.

The Board are therefore requested to issue a declaration that the shed as built in December 2019 is **development and is exempted development**.

Signed:



David Mulcahy

BA (Mod. Natural Sciences), MRUP, MSc. Urban Design, MIPI, MRTPI

**David Mulcahy Planning Consultants Ltd**

**CHARTERED PLANNING CONSULTANTS**



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### **Appendices**

- A** Copy of Kildare County Council declaration.
- B** Photographic proof of the shed being built in August and October 2019 (source client).

**A** Copy of Kildare County Council declaration.





**Declaration of Development & Exempted Development under  
Section 5 of the  
Planning and Development Act 2000 (as amended)**

ED/00851

**WHEREAS** a question has arisen as to whether a development a 16m<sup>2</sup> pitched roof domestic shed at Kill West, Kill, Co. Kildare is or is not development and is or is not exempted development,

**AS INDICATED** on the plans and particulars received by the Planning Authority on 1<sup>st</sup> April 2021,

**AND WHEREAS** Mimi Keogh has requested a declaration on the said question from Kildare County Council,

**AND WHEREAS** Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- Planning and Development Act 2000 (as amended);
- Planning and Development Regulations 2001 (as amended) and;
- Documentation received with the application;

**AND WHEREAS** Kildare County Council has concluded that the proposed works comprise development to which the provisions of the following applies:

- Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended),
- Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), and
- KCC Reg. Ref. 20/544 (ABP Ref. BP 307975-20),

**NOW THEREFORE** Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that **the works are development and are not considered exempted development** because:

- The development is a type of development which falls within the provisions of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) as provided for under Article 6 of the Planning and Development Regulations 2001 (as amended), and that Article 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended) restricts the application of such development as Condition no. 4 of Ref. 20/554 (ABP 307975-20) provides that no development under Class 3, Part 1, Schedule 2 shall occur on the site without a prior grant of permission.



B Photographic proof of the shed being built in August and October 2019 (source client).





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Kill West  
20 August 2019 20:46

Edit







Kill West  
14 October 2019 12:30

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HDR

