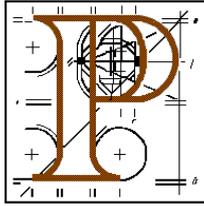

An Bord Pleanála



Inspector's Report

Development: Retention of conversion of existing garage to a utility area, toilet and kitchen and installation of a bay window at 134 Mayorstone Upper, Ennis Road, Co.Limerick.

Planning Application

Planning Authority : Limerick City and County Council

Planning Authority Register Reference : 14/32

Type of Planning Application : Retention Permission

Applicants : Eoin Crowley & Rebecca O'Farrell

Planning Authority Decision : Refuse

Planning Appeal

Appellants : Eoin Crowley & Rebecca O'Farrell

Type of Appeal : 1st Party v. Refusal

Observers : None

Inspector : Pauline Fitzpatrick

Date of Site Inspection : 14/07/14

1. SITE LOCATION AND DESCRIPTION

No. 134 is a two storey semi-detached dwelling in the mature residential area of Mayorstone accessed from the Ennis Road in north Limerick City. The estate comprises a mix of house designs, some of which are served by garages.

The original single storey garage to the side of No. 134 has been converted, part of which has been incorporated into the kitchen area with the front section used as a separate utility room. A single storey extension has been constructed to the rear of the dwelling.

2. PROPOSED DEVELOPMENT

Permission is sought to retain the conversion of the side garage to a utility room, toilet and kitchen and the installation of a bay window in the front elevation.

3. INTERNAL REPORTS

Water Services in a report dated **11/04/14** recommends refusal of permission as it poses an unacceptable risk to the operation, maintenance and access to a public foul sewer. The pipeline is located beneath and close to the proposed extension.

The **Planning Report** dated **24/04/14** notes that it is policy of Limerick City Council that building over public pipes is not acceptable. A refusal of permission is recommended.

4. PLANNING AUTHORITY'S DECISION

The Planning Authority (PA) issued a notification of decision to refuse permission for the above described development for the following reason:

It is considered that the proposed development, the construction of a dwelling extension over an existing public foul sewer main, would be contrary to the requirements of the Water Services Act 2007 (as amended) and the relevant policies set out in the City Development Plan, 2010-2016, and if permitted as proposed, would be seriously detrimental to public health and the amenities of future residents and would therefore be contrary to the proper planning and sustainable development of the area.

5. GROUNDS OF APPEAL

The submission by Planning Consultancy Service on behalf of the appellants which is accompanied by supporting detail, can be summarised as follows:

- The line of the sewer runs west to east underneath the footprint of the lean-to garage which has been converted. Close to the rear building line of the converted garage, at a point demarcated by a manhole, the sewer line turns due south. It runs under the garage/shed of No.13 and under the sheds of Nos. 14 and 15 further south again.
- There was always a garage over the sewer. The physical extent of the extension is the same as the garage. It does not result in any greater impact on the sewer line.
- Consulting Engineers' reports attached clarify the position, condition, route and depth of the sewer line transecting the site. They confirm that the subject development does not represent a risk of collapse on the public sewer pipe. The latest report confirms that the building will pose no risk to the operation, maintenance and access to the sewer line. The re-routing of the sewer is not necessary in this case.
- There is no practical solution available in terms of re-routing the sewer at this location. The development plan allows for discretion in relation to the stated provisions.
- The proposal does not constitute a material contravention of the development plan.
- The application should be assessed under the provisions of the Planning Act and not the Water Services Act. Notwithstanding, evidence has been provided to demonstrate that the conversion does not risk or interfere with the integrity of the sewer line nor would it interfere with access requirements.
- A refusal of permission will not improve access to the sewer manhole to the rear of the property. An extension could be built over the sewer which would come within the exempted development provisions. A grant of permission with suitable conditions will provide the Council/Irish Water with greater protection and access to the sewer than heretofore. There is no objection to the imposition of a suitable condition to facilitate maintenance of the sewer and/or access to the manhole to the rear of the property.
- Should the Board be minded to grant permission development contributions should be waived as the converted garage does not represent an addition in floorspace over that which existed on site since pre'63 times.

6. PLANNING AUTHORITY'S RESPONSE TO GROUNDS OF APPEAL

No response received

7. OBSERVATIONS

None

8. RELEVANT PLANNING HISTORY

13/110 – permission refused In January 2014 for alterations and additions to the dwelling including side extension, new front bay window, new front porch roof overhang and the widening of the existing site entrance and driveway. The reason for refusal is the same as that given in the current case.

9. DEVELOPMENT PLAN PROVISIONS

The Limerick City Development Plan 2010 refers. The site is within an area zoned 2A Residential Land Use, the objective for which is to provide for residential development and associated uses.

Water Services – It is a policy of Limerick City Council that building over public pipes is no longer acceptable. As part of any planning application the applicant is required to submit a site layout plan prepared by an Engineer with a minimum of €2m professional indemnity insurance, certifying the location of the sewer, or common drainage serving more than one house, on site by physical survey.

If, in order to facilitate a proposed development, the re-routing of the existing sewer is necessary the applicant must submit as part of the planning application a site layout plan and cross sections showing the re-routing of the said public sewer where no part of the proposed development shall come within 5m of same. Should re-routing of the sewer not be possible and no alternative solution exists, a refusal of planning permission may result. The applicant is requested to consult with the Limerick City Council Water Services Department prior to the submission of any proposal which may affect public pipes.

10. ISSUES AND ASSESSMENT

In view of the established residential nature of the area the proposed works to be retained, namely the conversion of the side garage to a utility room and kitchen and installation of a bay window in the front elevation, are acceptable in the context of the zoning provisions of the area and the amenities of adjoining property. A rear

extension to the dwelling has been constructed but does not form part of the application.

The substantive issue arising is the fact that the works to the side of the dwelling namely, the conversion of the garage is over a public sewer. As can be extrapolated the garage would appear to have formed part of the original house development and thus has been in place over the public sewer for a significant period of time. This does not appear to be a unique phenomenon in older residential areas throughout the city. There is a manhole on the public road with a further manhole to the rear of the conversion. The sewer then turns south and runs under the shed to the rear of number 13 and then to the rear of the dwellings further south, again under sheds in some instances.

As noted the footprint of the said conversion is exactly that of the previous garage and the conversion does not appear to present any material increase in weight or impact on the sewer. Consulting Engineers' reports accompanying the appeal submission attest to this fact.

Whilst it could be argued that the expense that would be incurred in the removal of a garage would be materially less than a habitable room should direct access be required to the pipe underneath this hypothesis, in my opinion, is somewhat academic. The Council has not detailed any cases where such access has been required at this location or in comparable situations in the vicinity. It is reasonable to conclude that access through opening up the ground would not be possible due to the fact that line runs not only under the existing structure on the appeal site but also other buildings in the immediate vicinity. The more realistic scenario would be the Council /Irish Water gaining access to the sewer via manholes, namely those on the public road and that to the rear.

I consider that the Development Plan prohibition would more appropriately apply to new build rather such conversion works and I recommend that discretion in terms of its application be exercised in this instance. However I recommend that a condition be attached precluding any further development to the rear of the conversion over the manhole so as to ensure that it is fully accessible.

As per class 1, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, such a conversion constitutes an extension of the house. The conversion has a stated area of 16.9 sq.m. whilst the extension constructed to the rear of the dwelling has a floorspace in the region of 29 sq.m. As the cumulative figure exceeds the 40 sq.m. threshold as detailed in the first footnote to the table the development contribution scheme is considered to be applicable in this instance. I therefore recommend that the relevant condition be attached.

11. CONCLUSION AND RECOMMENDATION

On the basis of the evidence provided I consider that it has been demonstrated that the conversion does not risk or interfere with the integrity of the sewer line nor would it interfere with access requirements. I therefore recommend that retention permission for the above described development be granted for the following reasons and considerations subject to conditions.

REASONS AND CONSIDERATIONS

Having regard to the established pattern of development on the site it is considered, subject to compliance with the conditions set out below, that the proposed retention of the conversion of the garage to the side of the dwelling for use as habitable space would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. This grant of retention permission relates to the conversion of the existing garage and installation of a bay window to the front elevation only. It does not refer to any other structures or works on the site.

Reason: In the interests of clarity.

2. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development shall be erected over or in the vicinity of the manhole to the rear of the converted garage.

Reason: In the interest of the public health and the amenities of the area.

3. 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 and Development Act 2000. The contribution shall be paid prior to the 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. 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Pauline Fitzpatrick
Inspectorate

August, 2014