

An Bord Pleanála



Inspector's Report

Reference: PL19.245301

P.A. Reference: 15/186

Title: Modifications to approved plans, retention of existing single storey dwelling, modifications and retention of altered entrances and 2 no. metal clad shed structures.

Location: Newtown, Cullohill, Co. Laois.

Applicant: Michael and Eamon Fogarty

Appellants: same

Observers: None

PA: Laois County Council

Type of Appeal: First party against refusal

Decision: Split decision

Date of Site Visit: 14th November 2015

Inspector: Philip Davis

1. Introduction

This appeal is by the applicant against the refusal element of a split decision. The proposed development includes for the retention of a small single storey dwelling and two sheds to the rear of a site, with permission granted for retention and alterations to a shared splayed entrance. The key issue in the appeal is a requirement under a 2002 permission to demolish an existing dwelling on the site.

2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

Newtown, Cullohill

Newtown townland is located on the largely flat open plains of south Laois in an area characterised by an open landscape of fields in arable and pasture use bounded by neatly trimmed hedges. The land generally slopes to the west and north – there are extensive raised bogs on lower lying lands to the north. The area is intersected by the R639 Darrow to Johnstown Road, formerly part of the Dublin to Cork road prior to the completion of the M8, which is just under 3 km to the west. The R639 is a generally straight wide single lane road with substantial hard shoulders which runs along a slight but discernible ridge. A number of third class roads north and south of the R639 serve farms and occasional houses in the area. The village of Cullohill (or Cullahill) is 1.7 km to the south-west of Newtown, while the town of Darrow is just over 4 km to the north-east. Otherwise, settlement is sparse, with a scatter of occasional dwellings along the minor road network and a small number on the main road.

The site and environs

The appeal site, with a site area given as 0.41 hectares, is a long, rectangular site on the southern side of the R639 at the junction of a third class road which runs south from the regional road. It is bounded by fences and hedges. It is occupied by a small single storey dwelling on the corner of the junction, with a larger bungalow behind it. To the rear, on the western side, are two lean-to metal sheds. The site has an access to the third class road to the east.

West of the site is a large dwelling. Beyond this is open agricultural land.

North of the site is the R639, with open fields beyond this.

East of the site is a third class road. Across the road is a narrow field, with a large farm holding beyond this.

South of the site are open fields.

3. Proposal

The proposed development is described on the site notice as follows:

Modification of approved plan ref. 02/319, with reference to condition 16 attaching to the plan and for the retention of the existing single storey dwelling in the north-east portion of the site, to close 1 no. entrance from public road and for internal modifications to accommodate sharing of existing splayed entrance. Retention is sought for the existing splayed entrance located c. 14 m to the south-east of the original approved plan location and also for 2 no. metal clad shed structures to the rear of the site.

4. Technical Reports and other planning file correspondence

Planning application

The planning application, with supporting documentation and plans was submitted to the planning authority on the 27th May 2015. An attached letter outlines the family circumstances behind the proposed works.

Internal and External reports and correspondence.

Western Area Office: Notes requirement for drainage not to flow onto the public road.

Planning memo: Notes that the site was subject to an enforcement notice for unauthorised structures/sheds and non-compliance with conditions no. 1 and 16 of planning permission ref no. 02/319.

Laois CC Planners Report: The planning history is noted – two withdrawn applications and a permission from 2002 to construct a new dwelling, with a condition that the existing dwelling be demolished. It is noted that the requirements of the enforcement notice have not been complied with. It is noted that the proposed retention of the dwelling would contravene development control standards in the CDP as the site would not measure 0.5 acres and would not have sufficient individual road frontage and so would represent an overdevelopment of the site. No objections are outlined for the closing of the entrance to the public road, the retention of the existing splayed entrance and the retention of the 2 no. metal clad shed structures to the rear. A split decision is recommended.

5. Decision

The planning authority decided in a split decision to:

Refuse the modification of condition 16 of permission 02/319 and the retention of the existing single storey dwelling for the reason that (in summary),

- It is contrary to development control standards for single houses;
- It would represent overdevelopment of the site; and,
- It would contravene the previous grant of permission.

A grant of permission was issued for:

- The closure of 1 no. entrance from the public road and for internal modifications to accommodate sharing of existing splayed entrance;
- The retention of existing splayed entrance; and,
- The retention of 2. no. metal clad shed structures,

The above is subject to 4 no. conditions. Condition 2 states that the shed structures on site shall be for purposes incidental to the enjoyment of the dwelling house only, and condition 3 stated that no further internal subdivision of the site shall be permitted without a proper grant of planning permission.

6. Planning Context

Planning permissions – appeal site

In 2002, the planning authority granted permission **(02/319)** ‘to demolish existing dwelling and erect new dwelling house at Newtown, Cullohill’. Condition 16 of this permission stated that:

‘Prior to the first completion of the proposed dwelling, the existing dwelling shall be fully demolished. Save for that which can be recycled, all waste material shall be brought to a recognised landfill site to the satisfaction of the planning Authority and Environment Authority.’

Reason: *In the interest of orderly development and visual amenity.’*

I note that there is no copy of this permission on the file, but the full decision notice and file is available on the Laois.ie website.

Planning permissions – adjoining areas

None relevant on file.

Development Plan

The appeal site is in open countryside, identified as ‘structurally weak’ in the context of settlement policy.

Relevant extracts from the County Development Plan are attached in the appendix to this report.

7. Grounds of Appeal

The appeal is against the refusal element of the permission. The following points are outlined:

- It is stated that the cottage has been the family home of the Fogarty family of seven siblings including the applicants (two brothers, sons of the original owners).
- The applicants confirm that it will only be used by the Fogarty family and will not be sold to others at any time.
- The cottage was willed to the applicant by his deceased father.
- It has a safe entrance and has no negative visual impact and has an independent septic tank and water supply.
- It is structurally sound and has enabled the family to care for their now deceased parents.
- It is noted that the development plan is consistent with development plan policy (page 3).
- It is noted that the house was constructed prior to the 2011 development plan, and that the overall site is one acre.
- It is argued that it is inappropriate to demolish a habitable dwelling when the development sets out a need for further social housing in the County.

8. Planning Authority’s Comments

The planning authority did not respond to the grounds of appeal.

9. Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- **Overview**
- **Principle of development**
- **Public health**
- **Road safety**
- **Appropriate Assessment and EIA**
- **Other issues**

Overview

The appellant has appealed just the refusal element of the proposed development, but as all the various elements are interrelated, I will address the application *de novo*.

Principle of Development

The site is in open countryside without a specific designation, but is within an area identified as 'structurally weak', and as such would not be subject to the stricter criteria for single homes set out in the Development Plan, reflecting the guidance in the 2005 Sustainable Rural Housing Guidelines. The development plan in general recognises the general rights for local persons to build dwellings in their locality subject to general criteria; supports local businesses in rural areas where appropriate; and recognises specific family needs. One key development criteria is set out in Development Standards (DCS11) where it states that:

New dwellings in the countryside require road frontage of 30 metres and the related site should measure at least 0.5 acres

The appellant has noted that the proposed development pre-dates the 2011 Plan, but while full details of previous development plans are not available, such a common standard (in particular regarding its use of imperial measurements) would seem to be a long standing part of the development plans throughout the country so I would assume it has for decades been a required standard, at least since SR6:1991 set out the c. 0.2 hectare minimum requirement for septic tanks (prior to the current EPA standards)

The small cottage seems to have been on the site for many decades, and predates the 2002 planning application. I note that while the planning authority quotes condition 16, application 02/319 was unambiguously described as including the demolition of the existing dwelling on the site. It was, in short, the applicants who applied for this, so presumably this was the intention from the beginning, the decision not to demolish it being taken at a later date. I would accept that the subsequent ill health of the family parents would have been an

understandable reason for wishing more space on the landholding. Notwithstanding this, it seems entirely likely that the planning permission would have been refused at the time if it was known the existing house would not be demolished as it would have been contrary to accepted standards at the time.

The current situation is apparently that the two dwellings on site are both owned by brothers from the family, and are functionally separate in terms of water and wastewater, although they share an entrance. The precise dimensions of this part of the site are not clear as the submitted plan appears to be incorrectly scaled. The 'single storey house' site is served by an access along with a septic tank on an equivalent area of land to its south, which is indicated as being within 'shared' ownership.

The overall situation is therefore quite confusing, and given the shared nature of part of the site it is not a complete partition of the site. In any event, the plot of the smaller dwelling is clearly well below development plan standards. While it can certainly be argued that such standards should not be regarded as 'absolute', a key issue is that this site, along with the 'shared' element' is far below the size that would normally be acceptable for a septic tank or any other proprietary system with a discharge to groundwater. While the EPA wastewater disposal standards allow for sites less than 0.2 hectares to be used in some circumstances, these are quite restrictive and need significant care in design and choice – I am not clear that this smaller dwelling could properly be served in accordance with the EPA standards. I would therefore consider that the overall layout and proposal represents overdevelopment of the site and an inappropriate standard of development which would be contrary to development plan standards.

The metal sheds to the rear are quite low, and only just about visible from the nearby roads. I do not consider that there is any planning issue with their construction and use by the landowners, so long as they are incidental to the enjoyment of the house as any commercial use would potentially be an issue with the adjoining dwelling to the west, and traffic access to the minor road.

Public health

The issue of public health was not raised in the appeal, but as I have outlined above I would have strong concerns about the use of a septic tank on such a very small site to the front, in particular as much of this part of the site is paved and used as an access.

Road Safety

The proposed alterations to the access appear to be adequate – although the proximity to the junction is not ideal, there are sufficient sight lines here and having regard to the nature of the road and the area I would concur with the decision of the planning authority to grant

permission for this element, having regard to the generally low level use of such a residential site.

Appropriate Assessment and EIA

The proposed development was not subject to an AA screening, although the planning authority noted in its report that it was not considered to have any potential impact on a Natura 2000 site. The only Natura 2000 site in the vicinity is the Nore and Barrow SAC, site code 2162, just under 2 km north of the area. The designated area includes a number of raised bogs. The site appears to drain to the south, although may ultimately drain to the Nore/Barrow catchment. However, given the nature of the proposed development and the separation distance I do not consider that there would be any impact on the conservation objectives of this or any other EU site. Due to the small scale and nature of the proposed development the issue of EIA does not arise.

Other issues

The site is not indicated on any available source to be prone to flooding. There is a recorded ancient monument opposite the main road, but there are no reasons to consider that there would be any significant impact on this. There are no buildings listed on the NIAH in the vicinity. The proposed works for retention do not require a development contribution under S. 48 or 49 of the Act. I do not consider that there are any other significant planning issues arising from this appeal.

10. Conclusions and Recommendations

I conclude that the retention of the single storey dwelling is contrary to a condition set in a previous permission, and that it would represent disorderly and substandard quality of development. Notwithstanding this, the other elements to the proposed development are acceptable and I recommend permission subject to conditions.

I recommend therefore, that in a split decision, planning permission be **refused** for the retention of the single storey dwelling for the reasons and considerations set out in schedule 1 below, but permission is **granted** for the alterations to the access and the retention of the metal sheds for the reasons and conditions set out in schedule 2 below, subject to the conditions set out in schedule 3.

Schedule 1 - REASONS AND CONSIDERATIONS - Refusal

The proposed development, consisting of a proposal to modify approval plan ref. 02/319 for the retention of the existing single storey dwelling in the north eastern portion of the site would, by reason of it consisting of the retention of a dwelling for which permission was granted for a replacement on the basis of the existing dwelling being demolished, contravene materially a condition attached to an existing permission for development namely, condition number 16 attached to the permission granted by Laois County Council on the 16th day of July 2002 under planning register reference number 02/319.

Schedule 2 - REASONS AND CONSIDERATIONS - Permission

Having regard to the nature of the area, the previous use of the land, and the nature of the proposed development, it is considered that subject to the conditions set out below the closure of 1 no. entrance from the public road and internal modifications to accommodate the sharing of the existing splayed entrance; the retention of an existing splayed entrance located c. 14 metres to the southeast of the original approved plan location; and the retention of 2 no. metal clad shed structures to the rear of the site would not injure the amenities of the area or be contrary to the development plan and would otherwise be in accordance with the proper planning and sustainable development of the area.

Schedule 3 - CONDITIONS

1. 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. For the avoidance of doubt, the development permitted by this permission is the closing of 1 no. entrance from the public road and for internal modifications to accommodate sharing of existing splayed entrance; the retention of the existing splayed entrance located c. 14 metres to the south east of the original approved plan location; and the retention of 2 no. metal clad structures to the rear of the site. It does not include the retention of the single storey dwelling on the north-eastern corner of the site.

Reason: In the interest of clarity.

2. The 2 no. metal shed structures on site shall be solely used for purposes incidental to the enjoyment of the dwelling house and for no other reason. No business, trade or commercial activity shall take

place from the proposed development without a prior grant of permission.

Reason: In the interest of orderly development.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Philip Davis,
Inspectorate.
30th November 2015