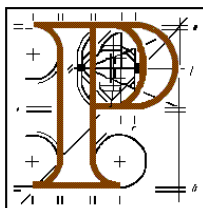


## An Bord Pleanála



### Inspector's Report

**DEVELOPMENT:** Permission to retain detached garage, conversion of garage attached to dwelling to living accommodation, the provision of a dormer window and a "velux" type window to the rear roof plane of the dwelling, alterations to the fenestration to the rear of the dwelling. The extension and alterations to a detached store and all ancillary site works.

**LOCATION:** Ballyknock Lower, Kilgobnet, Dungarvan, Co Waterford.

#### PLANNING APPLICATION

**Planning Authority:** Waterford City & County Council.

**Planning Authority Reg. No:** 15/747

**Applicant:** Fiona Mulcahy.

**Application Type:** Permission.

**Planning Authority Decision:** Grant Permission subject to conditions.

#### APPEAL

**Appellant:** Sinead Mulcahy

**Type of Appeal:** Third Party v Permission

**Observers:** None

**DATE OF SITE INSPECTION:** 15<sup>th</sup> May 2016

**INSPECTOR:** Bríd Maxwell

## **1.0 SITE LOCATION AND DESCRIPTION**

1.1 The appeal site which has a stated area of .405 hectares comprises a residential site located within the townland of Ballyknock Lower, a rural area approximately 3.5km to the north of Dungarvan, Co Waterford. The site is elevated over road level and enjoys pleasant distant views to the south. Land rises further northwards to the rear of the site. The appeal site is accessed from a local road which runs along its southern boundary. The site is occupied by a two storey dwellinghouse located towards its eastern end with a detached domestic garage located the rear of the house. To the western end of the site is a substantial store which comprises is an A framed structure of concrete walls with roof and side cladding. There are a number of dwellings in the vicinity including one immediately adjacent to the west and one on the opposite side of the local road to the south.

## **2.0 PROPOSED DEVELOPMENT**

2.1 The proposed development as set out in public notices seeks permission to retain detached garage 87.45m<sup>2</sup>, conversion of garage attached to dwelling to living accommodation, the provision of a dormer window and a “velux” type window to the rear roof plane of the dwelling, alterations to the fenestration to the rear of the dwelling. Permission is also sought for retention of the extension 202.16m<sup>2</sup> and alterations to a detached store and all ancillary site works.

## **3.0 PLANNING HISTORY**

- 03/860 Permission granted for a dormer dwelling, store 274m<sup>2</sup>, septic tank, percolation area and associated site works. Condition 12 required that the store be used for storage purposes only and shall not be used for any commercial activity without a formal application being submitted to and approved by the planning authority.

## **4.0 PLANNING AUTHORITY’S DELIBERATIONS AND DECISION.**

### **4.1 Submissions**

4.1.1 Submission on behalf of the Third Party Appellant indicates no objection to the alterations to dwelling or to the detached garage. Objection relates to the alterations to the store. The addition of two extensions renders the store incompatible with the residential use of the property. Bulk, scale and commercial / industrial appearance of the store and location in close proximity to two dwellings renders it visually obtrusive and out of character. Concern is expressed that the store is being used as a workshop on a commercial basis resulting in noise and other nuisance to adjacent residential property.

## **4.2 Planning Authority Reports.**

- Planner's report asserts that the alterations to the dwelling and garage are acceptable. The scale of the store is not considered unduly prominent. Permission recommended subject to conditions.

## **4.3 Planning Authority's Decision**

4.3.1 By order dated 16/2/2016 The Planning Authority decided to grant permission subject to 4 conditions which included the following:

- Condition 2: Development Contribution of €1,431.50.
- Condition 3. The detached store shall be used for storage purposes only and shall not be used for any commercial activity, habitable purposes or housing of animals. The store shall not be sold or disposed of separately from the existing dwelling on site.
- Condition 4. The existing garage to the rear of the dwelling to be used for purposes incidental to the enjoyment of the dwelling.

## **5.0 APPEAL SUBMISSIONS**

### **5.1 Third Party Appeal**

5.1.1 The third party appeal is submitted by Bernard Harte Consulting Engineer, on behalf of Sinead Mulcahy daughter of the owners and residents of the adjacent property immediately to the west of the site. Grounds of appeal are summarised as follows:

- Increase in scale and width of the store constitutes a significant obtrusive alteration to the building.
- Concern expressed that the store has been or may in the future be used for commercial purposes.
- Layout and entrance arrangement renders the property suitable for sub-letting on commercial basis.
- Concerns in relation to incinerator within the building used for the burning of waste oil and vehicle wash bay outside the store.
- Aerial photograph of the property, attached to the appeal submission, clearly indicates the inordinate excessive size of the store and proximity to adjacent dwelling.
- Council Planner failed to adequately inspect the property and address all issues raised.

### **5.2 Response of Planning Authority to Grounds of Appeal**

5.2.1 The Planning Authority response is summarised as follows:

- The Planning Authority is of the view that the appeal does not include any additional grounds for overturning the Council's decision to refuse<sup>1</sup> permission.

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<sup>1</sup> It is assumed that reference to refusal is a typo and should in fact read that *"The Planning Authority is of the view that the appeal does not include any additional grounds for overturning the Council's decision to grant permission"*.

### **5.3 First Party Response to the Appeal**

5.3.1 The first party response to the appeal is submitted by Michael Reilly and Associates Consulting Forensic and Litigation Engineers is summarised as follows:

- Note that the first party is a sister in law of the third party objector and that relations between the applicant and her parents in law have deteriorated since the untimely death of the applicant's husband. The appeal may have been submitted for vexatious purposes
- The late Mr Mulcahy was a panel beater by trade and in his spare time enjoyed rally driving and reconstruction, building and repair of rally and vintage cars. Mr Mulcahy was tragically killed in a rally car accident on June 30<sup>th</sup> 2013.
- The original store and small extension located on the western side of the building were constructed together in 2004.
- The extension store to the east was added in 2010/2011 to provide wood storage area and also houses a wood cutting and splitting machine and a speed boat.
- Total area of the store is 477sq.m.
- The store is neither prominent nor pronounced and is unobtrusive and retiring within the surrounding landscape
- Virtually no activity has been carried out within the structure since 2014.
- Diesel stove within the store is similar to diesel stove found in many domestic houses. There is no incinerator and no noxious materials are being burned in the store.
- Area to the east of the store not intended for use as washing area.
- First party has no intention of leasing the store of carrying out any function in the store save its present use as a store.
- Planning authority sought to regularise the situation and imposed reasonable and fair planning conditions which the applicant accepts.
- First party is willing at her own cost to continue the existing concrete wall along the western boundary until meets the roadside boundary at a height of 2.4m to afford extra privacy to the neighbouring property.

### **6.0 PLANNING POLICY**

6.1 The Waterford County Development Plan 2011 – 2017 refers.

### **7.0 ASSESSMENT**

7.1 From my review of the file, all relevant documents and inspection of the site and its environs, I consider that the key focus for assessment relates to the retention of the extensions to the store and its visual impact and impact on the amenities of the area. I note that the third party appellant raises no concerns in relation to the alterations carried out to the dwelling nor to the detached garage and I would concur that

there are no issues of concern arising in respect of these elements of the development proposed for retention.

7.2 As noted within the Planner's report concerns were expressed at the time of the original application for the store having regard to its proposed scale 274m<sup>2</sup> and height 7.8m, its proximity to the adjacent dwelling to the west and its industrial character. The height of the structure was reduced to 5.8m in response to the concerns then expressed and permission was granted. The structure as now proposed for retention extends to a total footprint of approximately 477m<sup>2</sup>. It is substantial in scale and in terms of character is industrial in appearance with extensive cladding and roller shutter doors. The application outlines that the structure was constructed for the purposes of facilitating the hobby of the Mr Mulcahy for repair and restoration of rally and vintage cars. Mr Mulcahy tragically died in a rally crash in 2013. The applicant does not intend to use the store for commercial use rather intends that it will remain as a store for cars and related equipment.

7.3 I noted from my observations on site visit that there was no evidence of use of the structure for commercial purposes. Whilst I appreciate the sensitivities arising in the appeal case and acknowledge the natural desire of the first party to seek to retain all elements of her late husband's hobby project, I consider that a store of this scale is inappropriate on a rural residential site and having regard to its proximity particularly to the established dwelling to the west I consider that the store extensions are entirely out of character and have significant potential to give rise to conflict with established rural residential amenity. I consider that the proposal to continue the mass concrete wall along the western boundary of the site would further exacerbate the harsh industrial character of development. On the basis of my assessment I consider that the extensions are inappropriate. On this basis I recommend a split decision.

7.4 As regards the issue of Appropriate Assessment having regard to the nature and scale of the proposed development and nature of the receiving environment and distance to 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**

8.1 I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that

permission be granted for retention of detached garage, conversion of garage attached to dwelling to living accommodation, the provision of dormer window and a velux type window to the rear roof plane of the dwelling alterations to the fenestration to the rear of the dwelling. I recommend that permission be refused for retention of extensions and alterations to detached store for the reasons as set out below.

**Grant permission to retain detached garage, conversion of garage attached to dwelling to living accommodation, the provision of dormer window and a velux type window to the rear roof plane of the dwelling alterations to the fenestration to the rear of the dwelling.**

### **REASONS AND CONSIDERATIONS**

Having regard to the pattern of development in the area, the design and nature of the works carried out to the dwelling and detached garage proposed for retention, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The development to be retained shall be 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 and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The garage shall be used for purposes ancillary to the enjoyment of the dwellinghouse as such.

Reason: In the interest of residential amenity.

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.

**Refuse permission for retention of alterations and extension to detached store.**

## **REASONS AND CONSIDERATIONS**

Having regard to the scale, bulk and height of the store and its location on an elevated rural site in close proximity to established residential dwellings, it is considered that the alterations and extension proposed for retention detract the visual and other amenities of the area, and would therefore be contrary to the proper planning and sustainable development of the area.

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Bríd Maxwell  
Planning Inspector  
17<sup>th</sup> June 2016