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Development	Retention of change of use of existing detached garage to living accommodation, alterations to fenestration and associated works.
Location	Tullaghmedan, Drumree, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	RA/160256
Applicant(s)	Paddy & Eleanor O'Sullivan
Type of Appeal	First Party
Planning Authority Decision	REFUSE
Appellant(s)	1. Paddy & Eleanor O'Sullivan
Observer(s)	None
Date of Site Inspection	31 <sup>st</sup> August 2016
Inspector	Niall Haverty

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## 1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Tullaghmedan, a rural area c. 6.7km west of Dunshaughlin, Co. Meath. The site is located on the L22072 local road, c. 50m south of the junction with the R154 regional road. There is an existing detached house and garage (subject of this appeal) on site. The appeal site is part of a cluster of one-off detached houses located either side of the R154. The surrounding area is generally in agricultural use.
- 1.2. The detached garage which forms the subject of this appeal comprises a two storey structure with a stated floor area of 149 sq m. The garage has the appearance of a single storey structure, with the first floor served by roof lights and gable windows. It has a dashed render finish, with redbrick quoins and detailing and a slate roof, all of which is consistent with the design of the main house. The structure accommodates three bedrooms, two en-suite bathrooms, a kitchen/living room at ground floor, a kitchen at first floor level (indicated as 'study' on the plans) and circulation space. It is situated to the side of, and set back from, the associated house on the site. The separation distance between the two structures is c. 6.3m.

## 2.0 Proposed Development

- 2.1. The proposed development consists of retention of:
- the change of use of an existing detached garage to living accommodation at ground and first floor level;
  - Alterations to fenestration, comprising: reduction in number of roof windows to the south roof slope from four to three; two new windows at ground floor level to the north elevation; one new window at first floor level to the west elevation; one new window at first floor level and a reduction in size of window at ground floor level to the east elevation.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. Meath County Council decided to refuse planning permission on 11<sup>th</sup> May 2016, for three reasons, which can be summarised as follows:

- **Reason 1:** Would materially contravene the provisions of the *Meath County Development Plan 2013-2019* which seeks to ensure that family units are linked directly to the main dwelling house (Section 11.2.3 of CDP).
- **Reason 2:** Development is out of character with the pattern of development in the area and would set an undesirable precedent.
- **Reason 3:** Applicant has not demonstrated that existing wastewater treatment system and percolation area has been adequately designed to cater for additional effluent resulting from change of use of garage (population equivalent of 5).

#### 3.2. Planning Authority Reports

3.2.1. The report of the area planner can be summarised as follows:

- Enforcement Notice (Ref. UD14277) issued 4<sup>th</sup> September 2015 for non-compliance with planning condition in relation to permitted garage being used as habitable space.
- Finish of development is consistent with main house.
- Development is an ancillary family flat to the main dwelling house.
- Development is not integrated with main house and is contrary to stated policy in the County Development Plan (Section 11.2.3)

- The area of the development has encroached upon the adjacent site to the north and includes the septic tank associated with that dwelling. It is not known if this septic tank still serves that dwelling.
- Site Characterisation Report has not been submitted which details the capacity of the septic tank. However, it is unacceptable for one wastewater treatment system to service two separate dwelling units on different sites.
- Stage 2 Appropriate Assessment is not required.
- Site is not located within or adjacent to an identified flood risk zone.
- Planning Officer recommended refusal for the same reasons set out in the Planning Authority's decision.

### 3.3. Other Technical Reports

3.3.1. There are no technical reports on file.

### 3.4. Third Party Observations

3.4.1. There were no third party observations.

## 4.0 Planning History

### 4.1. Subject Site

4.1.1. **TA/30190:** Permission granted for construction of two storey detached dwelling with detached domestic garage, site entrance, septic tank and proprietary effluent treatment system and all associated site works. Condition 10 states that:

- **Condition 10:** The garage shall not be used for human habitation or any other purpose other than a purpose incidental to the enjoyment of the dwelling.

**Reason:** In the interest of development control.

## 5.0 Policy Context

- 5.1. The appeal site is located on unzoned lands, in an area designated as being a “*rural area under strong urban influence*” in the *Meath County Development Plan 2013-2019*.
- 5.2. There are no Local Objectives, protected views, road proposals or other designations affecting the site.
- 5.3. Section 11.2.3 of the *Development Plan* sets out the provisions relating to ‘Family Flat Extensions’.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. A first party appeal has been submitted by McGovern O’Brien Chartered Building Surveyors on behalf of the applicants. The grounds of appeal can be summarised as follows:
  - The opportunity of connecting the unit to the house was considered but discounted due to distance.
  - The occupant of the unit is the 93 year old father of one of the applicants, who has occupied the unit for the last 8 years. Family members take turns residing with occupant, which avoids the need for a physical link between the two properties which in any event would only be temporary in nature.
  - There has been no permanent sub-division of the private amenity space and there is no intention to let or sell the unit.

- In order to prevent a precedent for similar development arising, any grant of permission can be restricted to the current occupant.
- The unit was converted from a garage to a residential unit in 2007. Two receipts dating from 2007 are appended to the appeal.
- Unauthorised use only came to light in 2014 on foot of wastewater treatment system inspection by Meath County Council. Applicants are seeking to regularise the situation.
- Issues identified during wastewater treatment system inspection were addressed and Notice of Compliance is appended to appeal.
- Requirement to demonstrate adequacy of wastewater management could have been dealt with by way of further information and is not adequate grounds for refusal. Any required alterations to the system can and will be dealt with by the applicants.
- If occupant of unit and family member caring for him were not occupying the unit they would be in the main house and there would be no net increase in wastewater.
- Given the period of usage in excess of 7 years and the age of the primary occupant, it is suggested that the use be permitted but limited to the named occupant for his lifetime and that the use ultimately revert to that of a domestic garage ancillary to the main house.

## **6.2. Planning Authority Response**

- 6.2.1. The Planning Authority points out that there is an enforcement file in relation to the site (Ref. UD14277). No further comments made.

### 6.3. Observations

6.3.1. No submissions/observations are on file from any other party.

### 7.0 Assessment

I note at the outset the reference to material contravention in the Planning Authority's first reason for refusal. I do not consider that the development, in principle, would seriously prejudice a specific Objective or Policy of the Development Plan and I do not consider that it can be reasonably considered to constitute a material contravention of the Development Plan. I consider therefore that the key issues in determining this appeal are as follows:

- Compliance with Condition 10 of permission Reg. Ref. TA/30190.
- Compliance with *Development Plan* provisions for 'family flats'.
- Wastewater Treatment.
- Appropriate Assessment.

#### 7.1. Compliance with Condition 10 of permission Reg. Ref. TA/30190

7.1.1. Condition 10 attached to the grant of planning permission for the house and garage on the appeal site states that the garage shall not be used for human habitation.

7.1.2. The development for which retention permission is sought would entail the use of the garage for human habitation and it would therefore contravene materially this Condition.

#### 7.2. Compliance with *Development Plan* Provisions for 'Family Flats'

7.2.1. Section 11.2.3 of the *Development Plan* sets out the Planning Authority's requirements in relation to 'family flats'. These include the requirement that it is not a



detached unit, that it is possible to provide direct access to the remainder of the house and that it forms an integral part of the main dwelling.

7.2.2. In this instance, the garage structure is detached and is located 6.3m from the main house. It does not therefore form an integral part of the main house and does not provide direct access to the house.

7.2.3. Furthermore, the structure is significant in scale, with a stated floor area of 149 sq m over two storeys and it provides a substantial quantum of residential accommodation (three bedrooms, two bathrooms, two kitchens, living room, study etc.). While the *Development Plan* does not specify a maximum size for 'family flats', I note that Section 11.2.3 of the Plan refers to occupation by 'a member' of the occupant family, which would imply that such flats should be modest in scale. Notwithstanding the details regarding the occupant and the nature of the use provided by the appellant, I consider that the scale of the development is beyond that which would normally be considered to comprise a 'granny flat' or 'family flat'.

7.2.4. The appellants suggest that permission could be granted but limited to the primary occupant for his lifetime, after which it would revert to being a domestic garage ancillary to the main house. In this regard, section 39(2) of the *Planning and Development Act 2000* (as amended) states that use can be restricted to "persons of a particular class or description", as embodied in a section 47 agreement.

7.2.5. However, both the *Development Management Guidelines for Planning Authorities* (2007) and the *Sustainable Rural Housing Guidelines for Planning Authorities* (2005) note that such Conditions should only be used sparingly in exceptional circumstances. The *Sustainable Rural Housing Guidelines* further notes that beyond such circumstances, the Planning Authority should focus on deciding the merits of the proposal in terms of the proper planning and sustainable development of the area.

- 7.2.6. In this case, and having regard to the issues identified above, I consider that it would not be appropriate to attach a Condition limiting the use of the residential accommodation in the garage structure to a named individual, or to grant a temporary permission.
- 7.2.7. In conclusion, the development would not be compliant with the provisions of Section 11.2.3 of the *Development Plan* and would result in the creation of an additional detached house on a relatively constrained site in an unserviced rural area which is under strong urban influence. In my opinion the development would set an undesirable precedent for similar such development and I therefore consider the development to be contrary to the proper planning and sustainable development of the area.

### 7.3. **Wastewater Treatment**

- 7.3.1. The Site Plan (Dwg. No. 200395-02) submitted with the application indicates that the garage structure is connected to a septic tank in the north west corner of the site (c. 7m north of the garage structure). However, the Site Layout Plan submitted with the original planning application for the house and garage (Reg. Ref. TA/30190) indicates a septic tank and Puraflo modules in the south west corner of the site. The same drawing indicates a septic tank and percolation area associated with the house to the north located relatively close to the garage structure.
- 7.3.2. The site boundary for the subject planning application has been extended from the 'parent' application TA/30190 for the house and garage, and it now incorporates an area previously indicated as part of the site associated with the house to the north. As noted in the Planning Officer's Report, it appears that the septic tank associated with the house to the north may now be located within the appeal site, and this appears to be the system that the converted garage is connected to. It is not clear whether the house on the adjoining site is still connected to this system or not. On

my site inspection I confirmed that there are two septic tanks located within the appeal site, as outlined above.

7.3.3. No information was submitted with the planning application regarding the design and capacity of the wastewater treatment system. While the appellants state that the Planning Authority's concerns in this regard could have been dealt with by way of further information, they have not submitted any such information with their first party appeal.

7.3.4. The appellants have enclosed a Notice of Compliance from Meath County Council dated 7<sup>th</sup> May 2015 with their appeal. However, it is not clear which of the two septic tanks on the appeal site that this relates to. The appellants state that if the resident of the unit and the family in a carer role were not occupying the converted garage they would be living in the main house and there would no net increase in the use of the wastewater treatment system. However, regardless of who is currently occupying the unit, it is a sizable unit with three bedrooms, two bathrooms and two kitchens and gives rise to the potential for a significantly increased volume of wastewater that will require treatment through a domestic wastewater treatment system that already serves an existing house.

7.3.5. The appellants have failed to demonstrate that the wastewater treatment system is capable of treating the potential increased effluent load from an additional residential unit to an acceptable standard.

#### **7.4. Appropriate Assessment**

7.4.1. The closest Natura 2000 sites to the appeal site are as follows:

- River Boyne and River Blackwater Special Area of Conservation ('SAC'; Site Code 002299) and Special Protection Area ('SPA'; Site Code 004232) which are located c. 7.7km to the north west.

- Rye Water Valley/Carton SAC (Site Code 001398) which is located c. 14.9km to the south east.

7.4.2. Notwithstanding the issues raised above in relation to the adequacy of the wastewater treatment system, the separation distance and the lack of a hydraulic connection to the above Natura 2000 sites means that 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 recommend that planning permission should be refused for the reasons set out below.

## 9.0 REASONS

1. The development to be retained would, by reason of providing residential accommodation within the garage structure, contravene materially a condition attached to an existing permission for development namely, condition number 10 attached to the permission granted by Meath County Council on the 1<sup>st</sup> day of September 2003 under planning register reference number TA/30190.
2. The development does not comply with the provisions for family flats set out in Section 11.2.3 of the *Meath County Development Plan 2013-2019*, which require such flats to be an integral part of the main dwelling and not detached. The development would result in the creation of an additional detached residential unit on a restricted site in an unserviced rural area which is designated in the *Meath County Development Plan 2013-2019* as being a rural area under strong urban influence. The development is out of character with the pattern of development in the vicinity, would set an undesirable precedent for other similar developments

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

3. The Board is not satisfied based on the information provided with the planning application and appeal that the development would not be prejudicial to public health given the lack of clarity regarding the design and capacity of the existing wastewater treatment system and associated percolation area and its potential to cater for the additional effluent arising from the change of use from a domestic garage to a residential unit. It is therefore considered that the proposed development would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

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Niall Haverty

Planning Inspector

6<sup>th</sup> September 2016