

An Bord Pleanála



Inspector's Report

Development:	Demolition of existing conservatory, construction of part single storey, mainly two storey extension, construction of a shed and all associated site services.
Location:	31 Dun Carraig Ceibh, Leitrim Village, Co Leitrim
Planning Application	
Planning Authority:	Leitrim County Council
Planning Authority Reg. Ref.:	16/55
Applicant:	Colm and Jane McGrath
Type of Application:	Permission
Planning Authority Decision:	Grant Permission
Planning Appeal	
Appellant:	Marieleen McLoughlin Daly
Type of Appeals:	3 rd v Grant
Date of Site Inspection:	27 th August 2016
Inspector:	Dolores McCague

1 SITE LOCATION AND DESCRIPTION

- 1.1 The site is located in a housing estate on the outskirts of Leitrim Village.
- 1.2 Leitrim Village is c 6 km north of Carrick-on-Shannon and 6km south of Drumshanbo, east of the River Shannon on the Ballinamore / Ballyconnell Canal.
- 1.3 The subject site is within an unfinished section of the housing estate where development has been inactive for some time, with most houses almost complete and some complete and occupied. The estate road, footpaths and lighting serving the site, have been completed.
- 1.4 The houses in this part of the estate are large detached houses. The subject site is situated at the end of an estate road where the overall site bounds a public road. There is no access from the estate road to this minor local road. Houses along the local road include a bungalow which adjoins the subject site.
- 1.5 The site is bounded to the west by a hedge adjoining the bungalow referred to above, to the south by a hedgerow adjoining the public road, to the north by two storey dwelling within the estate which appears to be unoccupied, and to the east by a two storey dwelling within the estate which appears to be unoccupied.
- 1.6 The site is occupied by a substantially complete dwelling which is vacant.
- 1.7 The site area is given as 0.149ha.

2 PROPOSED DEVELOPMENT

- 2.1 The proposed development comprises demolition of an existing single storey conservatory to the rear of the detached dwelling, construction of part single storey, mainly two storey extension, construction of a detached garage, internal and external alterations and all associated site services
- 2.2 The proposal consists of a two storey extension
- 2.3 The floor area of the development is given as 110.6m²; including a detached gym / garden store of c 37m². The floor area to be retained 217m².

3 PLANNING AUTHORITY DECISION

- 3.1 The planning application was lodged on the 20th April 2016.
- 3.2 **Technical Reports**
- 3.3 Planning Report 27/5/16 – the lands are within Leitrim village and zoned ‘primarily residential’. This is an application for permission to demolish a small single storey conservatory to the rear of the dwelling, construct an extension to the rear and side of the dwelling, provide internal and external alterations to the existing dwelling and construct a detached garage.
- 3.4 The existing boundary between the applicant site and the adjoining site to the west comprises a high mature tree line, having regard to the separation distance between both dwellings, and having regard to the orientation of the proposed garage and the orientation of the proposed extension and balcony to the dwelling relative to the location of the existing dwelling on the adjoining site to the west, the planner is satisfied that the proposed development will not result in overlooking of the private open space to the rear of the adjoining property and will not impact on the residential amenities of this property.
- 3.5 A grant of permission is recommended.

3.6 The planning authority decided - 9/6/2016 – to grant planning permission subject to 8 conditions, including:

6) Any alterations to the proposed development required in order to comply with national building codes of practice, passive low energy house, or renewable energy shall be submitted to the planning authority for its agreement prior to the commencement of the development.

Reason: In order to comply with the requirements of national building codes of practice.

8) The space in the converted attic shall be used for storage purposes incidental to the enjoyment of the dwelling and shall not constitute habitable accommodation.

Reason: To protect the health and safety of occupants of the second floor area.

3.7 Observations on the file have been read and noted.

4 PLANNING HISTORY

PL12.208226 PA Reg Ref 03/1140 - Full permission for 32 no. dwelling houses, new access onto public road with new junction, construction of surface attenuation pond and all associated works and full infrastructural works to service 4 no. dwellings on the serviced sites, numbered 1-4.

5 GROUNDS OF APPEAL

5.1 Marieleen McLoughlin Daly, Tullylahan, Leitrim Village has appealed the decision to grant permission.

5.2 The grounds can be summarised as follows:

- 5.3 Condition No 1: development to be completed in accordance with drawings etc, the drawings inaccurately state that the mature trees on the western boundary are to be retained. These trees are not within the site boundary but the third party's site, and she intends to remove them
- 5.4 The site layout plan does not show the dimensions of the garage or proposed extension from third party's boundary, not in compliance with Article 23(f). The layout indicates a larger site than appears on the ground. Notices refer to construction of a garage, drawings indicate a gym / shed. The façade of this building, facing the third party property, is fully glazed.
- 5.5 The site notice breaches Article 19(1)(c). Two site notices were fixed in obscure locations, visible only to a small number of estate residents and not to the passing public. The locations of the notices: one on a road well within the estate, and the second fixed on the wall of the subject development, are indicated. The notices should have been located along the southern boundary with the R280. Third party became aware of the application, by chance, from someone else. Local residents have not been afforded the opportunity to make submissions. The newspaper notice mentions only the name of the development and not the townland; it is not obvious to the general public what name refers to what estate.
- 5.6 Contrary to Article 19(4) both site notices were badly water damaged and illegible on 23rd May 2016, photos taken are attached to the grounds; and should have been removed and replaced per Article 20.
- 5.7 The proposed extension includes a large window which overlooks third party's front of property with a direct line of sight into her front rooms. The proposed balcony will overlook her property and impact her residential amenity.
- 5.8 Proposed development comprises extension to an unauthorised development which is not in full compliance with planning permission.

- 5.9 The finished floor level appears higher than that granted. Filling of the ground took place which does not appear to have been included in the original planning application. A large embankment along the southern boundary is being retained by a makeshift retaining wall, exposed to the public, constructed of randomly placed boulders.
- 5.10 The overall housing development included an attenuation pond for treatment of surface water before discharge, which has not been completed to date.
- 5.11 The original planning application shows a wayleave in the south east corner for surface water sewers, which has not been indicated on any of the maps or drawings submitted.
- 5.12 Third party requested that a condition be that the southern boundary be looked at, where the hedge row and stonewall were so badly damaged during construction. Leitrim County Council stated that this could not be done as it was outside the scope of the current application.
- 5.13 Third party requested that a condition be that her property would receive a wayleave agreement, across the edge of the applicant's property, so that in the future she can avail of access to public services and utilities located in the Dun Carraig Ceibh development. This could be positioned along the northern boundary running along the property of No. 30, if the garage is repositioned. This location would cause little disruption to the property and not hinder future development. The council should have made provision for this, when the original application was made, as her property is now part of the village. Leitrim County Council stated that this was not a planning issue.
- 5.14 Photographs are enclosed with the grounds of appeal.

6 RESPONSES

6.1 Planning Authority

6.2 The Planning Authority has responded to the grounds of appeal, including:

6.3 Regarding trees outside the boundary, the planning authority accepts that the layout plan indicates that some of the trees are within the site. The applicants were not proposing to interfere with them. In the event that the appellants decided to remove them the approved boundary treatment for the estate is a fence of 1.8m timber infill panels in concrete posts.

6.4 The site layout plan indicates the distance of the dwelling to boundaries. The distance of the garage can be scaled from the plan; it is 1.2m from the nearest point of the boundary; the omission of the distance is a minor issue.

6.5 The garage /gym has an internal floor area of 29 sq m; being just greater than the exempted floor area of 25 sq m. It comprises a garden store (18 sq m) and gym (11 sq m), referred to in the description of development as a garage. The finished floor level is the same as the dwelling and the shed is oriented at an angle, rather than perpendicularly to, the appellant's dwelling.

6.6 An earlier planning application was invalidated on the basis that there was no site notice in place. Allegedly a number of site notices were removed maliciously. The case officer presented a photograph of the site notice at the dwelling taken 3 weeks after the application had been lodged and further confirms that the second notice was erected and remained in place 5 weeks after the application was lodged and was in good condition. The appellant's submission to the planning authority was made the day before the 5 week period ended and made no mention of the condition of the site notices. The planning authority is satisfied that notices were maintained in place and were legible for the requisite 5 week period after the application was submitted. The planning authority accepts a site notice at a dwelling, whether or not the road has been taken in charge, provided it is accessible to

the public. The fence and gateway to the 8 houses at Dun Carraig Ceibh were removed during the 5 week submission period.

- 6.7 The housing development at Dun Carraig Ceibh has been in an incomplete state for a number of years, with the 8 houses at the end of the development, including the subject site, being fenced off from the remainder of the development until the recent past. The incomplete housing had been the subject of Public Safety Initiative works, comprising the erection of a fence and gateway.
- 6.8 Two notices were erected: one at the property and the other on the road within the housing development adjoining the fence and gate.
- 6.9 There are existing two storey houses to the rear of the appellant's house. The proposed development will not overlook the private amenity space to the appellant's property. The front of the appellant's property is overlooked from the public road. No changes to first floor windows are proposed along the northern elevation. The proposed garage will assist in preventing any overlooking in the event that the hedge is removed. The first floor window referred to in the appeal submission is to the master bedroom, not a living room, and is 29m from the nearest part of the front of the appellant's dwelling.
- 6.10 The Planning Authority disputes that any part of the residential development is unauthorised. The finished floor level of the subject dwelling and the appellant's dwelling are approximately equal. The subject dwelling is 2m above the level of the laneway, adhering to the details submitted in the original planning application and compliance details. A difference of 1.37m between the FFL of the appellant's property and the subject dwelling was shown, with the former being at a higher level. The contours of the subject application confirm the differential between the house and laneway, but not with the appellant's house. It may be that the subject dwelling was shown incorrectly on the drawings submitted, approx. 1m lower. This is considered a minor issue. There are no issues with regard to the stability of the boundary. Works on the attenuation pond are substantially completed and will be completed. Photograph of same is included in the submission.

6.11 The planning authority considered the way leave request to be a matter outside their remit. A number of dwellings, including the appellant's, are not served by gravity foul sewer. They are served by individual pump sumps which dispose to the gravity foul sewer. This would explain the rationale for not connecting any of the adjoining properties along the laneway through the development. The imposition of the requested way leave would be unreasonable.

6.12 **First Party**

6.13 The first party has not responded to the grounds of appeal.

7 POLICY CONTEXT

7.1 **The Leitrim County Development Plan 2011 – 2017** is the operative plan.

7.2 Relevant provisions include the zoning which is 'Primarily Residential'.

7.3 It is envisaged that the bulk of residential development will take place on lands zoned 'Primarily Residential'.

8 ASSESSMENT

8.1 The main issues which arise in relation to this development are: validity of application, compliance with existing permission, residential amenity, provision of a wayleave in favour of the third party, and appropriate assessment; and the following assessment is addressed under these headings.

8.2 **Validity of application**

8.3 The third party has raised a number of issues in relation to the validity of the application: that the site notices were wrongly located and were not maintained in a legible condition; that the published notice should have given the name of the townland instead of the estate name; that the detached building is variously described as a garage or gym/shed; that measurements were omitted from the site plan and that the site plan incorrectly indicates trees along the boundary as being within the site and to be retained, whereas they are in the third party's site and she intends to remove them.

8.4 I noted, on the date of inspection that many houses within the estate are occupied and that a large estate agent's sign at the entrance to the estate uses the estate name to identify the area, and I am satisfied that the estate name better identifies the proposed development than the townland which refers to a larger area. I noted also that the crown of the Ielandii trees planted along the outside of the site boundary extend into the subject site and in this regard I would consider that the term used on the site layout plan 'to be retained' indicates that the boundary is not being interfered with.

8.5 The planning authority has responded to the grounds of appeal, including that the site notices have been inspected on a number of occasions and that they are satisfied with the suitability of the location and condition of the notices.

8.6 I am satisfied that the application documents are adequate to describe the development, to inform interested parties of the application so as to enable them to make submissions; and that the documentation is sufficient to allow the Board to adjudicate on the appeal. I note that the planning authority has validated the application and I am satisfied that the application is valid.

8.7 The Board is advised not to rely on the graphics provided on the drawing accompanying the application which indicate that the public road is an entrance avenue to the subject dwelling.

8.8 Compliance with Existing Permission

- 8.9 The third party has raised a number of issues in relation to compliance with existing permission, stating that the proposed development comprises the extension to an unauthorised development which is not in full compliance with planning permission:

that the finished floor level appears higher than that granted;

that filling of the ground took place which does not appear to have been included in the original planning application. A large embankment along the southern boundary is being retained by a makeshift retaining wall, exposed to the public, constructed of randomly placed boulders;

that the overall housing development included an attenuation pond for treatment of surface water before discharge, which has not been completed to date; and

that the original planning application shows a wayleave in the south east corner for surface water sewers, which has not been indicated on any of the maps or drawings submitted.

- 8.10 The planning authority has responded, referring to levels on various drawings in the original application; a photograph of the attenuation pond is enclosed with the planning authority's submission which also states works on the attenuation pond had commenced, are substantially complete and will be completed.

- 8.11 In relation to the finished floor level of the subject house, the drawings on the subject application show levels to a temporary benchmark which is the finished floor level FFL=0. The adjoining road nearest the corner of the house is -2.000m. The drawings submitted with the previous application PL12.208226 (PA Reg Ref 03/1140) provide detailed levels. The drawings submitted on the 7/11/2003 provide road levels, site levels and contour lines on various drawings including drawing number C01 Rev A, where the road level nearest the subject house is 58.79m and the contours

at the house location are 59m and 60m. The finished floor level (ffl) is given as 59.8. On revised drawings submitted on 12/5/2004 the ffl is given as 60.636. The proposed ffl is therefore 1.846m above the road level; whereas it is given in the subject application as 2m above the road level a difference of 0.154m. In my opinion if this difference exists it is not significant.

- 8.12 In relation to the wayleave to be provided across the site for a storm water drain, the provision of such a wayleave is noted on the drawings associated with the previous application and for clarity a condition in relation to this wayleave is considered appropriate, if the Board is minded to grant permission.
- 8.13 In relation to the other matters raised, the Planning Authority disputes that any part of the residential development is unauthorised. The Planning Authority states that there are no issues with regard to the stability of the roadside boundary.
- 8.14 **Provision of a wayleave in favour of third party.**
- 8.15 The third party has requested that a condition be attached, that her property would receive a wayleave agreement, across the edge of the applicant's property, so that in the future she can avail of access to public services and utilities located in the Dun Carraig Ceibh development. The third party suggests that this could be positioned along the northern boundary running along the property of No. 30, if the garage is repositioned. This location would cause little disruption to the property and not hinder future development. The third party feels that the council should have made provision for this when the original application was made as her property is now part of the village.
- 8.16 The planning authority have responded that they consider the way leave request to be a matter outside their remit; that a number of dwellings, including the appellant's, are not served by gravity foul sewer, but are served by individual pump sumps which dispose to the gravity foul sewer; that this would explain the rationale for not connecting any of the adjoining properties along the laneway through the development; and that the imposition of the requested way leave would be unreasonable.

8.17 Based on the numbering system used in the previous application/appeal I am uncertain as to the location of the wayleave agreement proposed by the third party; in any case the imposition of such a condition, which is not a necessary condition and not a reasonable condition, would be ultra vires.

8.18 **Residential Amenity**

8.19 The third party has concerns in relation to the impact of the proposed development on her dwelling; that the proposed extension includes a large window which overlooks the front of her property with a direct line of sight into her front rooms; and that the proposed balcony will overlook her property and impact her residential amenity.

8.20 The proposed extension includes a large bedroom at first floor where previously a smaller bedroom was proposed. The proposed extension includes a large window to the first floor bedroom where previously a smaller bedroom window was proposed at a greater distance from the third party site: 3.2m further. The bedroom window faces towards the road and obliquely towards the front / roadside the third party's site, where views are available from the road. In my opinion there is not a significant increase in overlooking from the first floor window.

8.21 The proposed extension includes a large outdoor area above the living room. This area, described as a balcony, is accessed from the master bedroom. This large outdoor area is mainly located to the south of the master bedroom but also extends further west.

8.22 Where the outdoor area is to the south of the master bedroom there is no potential for greater overlooking of the adjoining site than from the bedroom window. However where it extends to the west of the bedroom the view from this area is also northwards and, depending on the height of the hedge, there is potential for overlooking of the rear garden of the adjoining property. In my opinion the extent of the balcony should be reduced and the western boundary should align with the gable of the master bedroom.

8.23 The third party has concerns in relation to the proposed gym and in particular in relation to the large glazed area which is close to her boundary. The proposed gym has glazing which extends the full width of the gable, comprised of four panels. This building is single storey and glazing at this level will not overlook the adjoining property due to the screening currently provided by the boundary trees. If the third party removes these trees, as is her stated intention, the alternative screening is easily achieved.

8.24 **Appropriate Assessment**

8.25 The proposed development is the demolition of an existing conservatory, and the construction of a part single storey mainly two storey extension, and the construction of a shed, and all associated site services; in an existing residential estate.

8.26 Having regard to the nature and scale of the proposed development and proximity 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.

9 RECOMMENDATION

In accordance with the foregoing assessment, I recommend that planning permission be granted for the following reasons and considerations and subject to the following conditions.

REASONS AND CONSIDERATIONS

It is considered that subject to the following conditions, the proposed alterations and extension to the dwelling and the construction of a shed would not impact on the amenities of the

area or conflict with the County Development Plan; and would accordingly be in accordance with the proper planning and sustainable development of the area.

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.

Reason: In the interest of clarity.

2 Subject to the alterations and extensions proposed to this dwelling, the terms and conditions of the previous permission PL 12.208226 PA Reg Ref 03/1140, shall be complied with in full.

Reason: In the interest of clarity.

3 The balcony area shall extend westwards only as far as the wall of the master bedroom.

Reason: In the interest of residential amenity.

4. Finishes of the completed dwelling harmonise with the existing building and be in accordance with the details indicated on the drawings submitted.

Reason: In the interest of clarity.

5 An attic shall not be provided in the detached shed and the shed shall be used only for purposes incidental to the enjoyment of the dwelling and shall not be used for human habitation.

Reason: In the interest of orderly development.

6 The attic area of the dwelling shall be used for purposes incidental to the enjoyment of the dwelling and shall not constitute habitable accommodation.

Reason: In the interest of clarity and safety.

7 Prior to the commencement of the development the developer shall satisfy the planning authority that the wayleave at the eastern end of the subject site, indicated on drawings submitted with the previous application PL 12.208226, PA Reg Ref 03/1140, has been provided.

Reason: In the interest of orderly development.

8 The developer shall pay to the planning authority a financial contribution of €1062 (one thousand and sixty two euro) 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. The application of any indexation required by this condition 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.

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.

Dolores McCague
Inspectorate

Date

Appendix 1 Map and Photographs

Appendix 2 Extracts from the Leitrim Community Development
Plan 2015 -2021