



An
Bord
Pleanála

Inspector's Report PL93.247226

Development	Single storey sunroom to the rear of property, storage rooms and toilets at first floor attic conversion.
Location	61 The Moorings, Maypark Lane, Waterford.
Planning Authority	Waterford City & County Council
Planning Authority Reg. Ref.	16/430
Applicant(s)	Bernard Rowell
Type of Application	Retention
Planning Authority Decision	Grant Permission
Type of Appeal	First Party v Condition
Appellant(s)	Bernard Rowell
Observer(s)	None on file
Date of Site Inspection	Not inspected
Inspector	Sarah Moran

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	3
3.3. Prescribed Bodies	4
3.4. Third Party Observations	4
4.0 Planning History.....	4
5.0 Policy Context.....	4
5.1. Waterford City Development Plan 2013-2017	4
5.2. Natural Heritage Designations	4
6.0 The Appeal	5
6.1. Grounds of First Party Appeal.....	5
6.2. Planning Authority Response to First Party Appeal.....	5
7.0 Assessment.....	6
8.0 Recommendation.....	9
9.0 Reasons and Considerations.....	9

1.0 Site Location and Description

1.1. The site is an existing 2 storey detached house (stated floor area 189 sq.m.) in an established suburban area on the southern side of Waterford City. It is surrounded by similar residential properties. The stated site area is 0.5313 ha. The site was not inspected. Given that the subject appeal relates to a point of principle and that there is ample photographic evidence on file, a site inspection was not considered necessary to assess the relevant issues.

2.0 Proposed Development

2.1. Permission is sought to retain the following:

- Single storey sunroom extension to the rear of the house;
- Attic conversion with additional residential accommodation, including insertion of velux windows to the rear elevation;
- Use of additional attic area over single storey side garage as storage and toilets.

The total stated floor area to be retained is 79.88 sq.m.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The PA granted permission on 11th August 2016, subject to 3 no. conditions. Condition no. 3 restricts the use of the permitted attic conversion to 'purposes of storage ancillary to the enjoyment of the dwelling house', in the interests of residential amenity. The remaining conditions imposed are considered to be standard for this type of development.

3.2. Planning Authority Reports

3.2.1. Area Planner report 10th August 2016, recommends permission subject to conditions. Attached AA screening report concludes that AA is not required. No other technical reports on file.

3.3. Prescribed Bodies

3.3.1. None on file.

3.4. Third Party Observations

3.4.1. None on file.

4.0 Planning History

4.1.1. There is no relevant recent planning history for the subject site on file. Permission was granted for a single storey extension to the side of the house under reg. ref. 99/500047.

5.0 Policy Context

5.1. Waterford City Development Plan 2013-2017

5.1.1. Chapter 12 Residential. Sections 12.1 and 12.2 policy on lands zoned for residential development

5.1.2. Chapter 13 Development Management. Section 13.2 policy on design and layout of residential extensions.

5.2. Natural Heritage Designations

5.2.1. The following designated sites are within 15 km of the development:

Site Name	Site Code
Tramore Back Strand SPA	004027
Mid-Waterford Coast SPA	004193
Tramore Dunes and Back Strand SAC	000671
Bannow Bay SAC	000697
Hook Head SAC	000764
Lower River Suir SAC	002137

6.0 The Appeal

6.1. Grounds of First Party Appeal

6.1.1. The applicant has appealed against condition no. 3, which limits the use of the converted attic space to storage purposes only. The main points made may be summarised as follows:

- The attic room as is does not undermine the residential amenity or proper planning and sustainable development of the area.
- Condition no. 3 has been imposed on the basis that the converted attic area does not comply with Building Regulations Technical Guidance Document F.
- The Technical Guidance Document is a suggestion and not a regulation.
- The attic room can comply with Technical Guidance Document F with some minor adjustments. The applicant is willing to move the side walls of the attic room, such that it would fall within the suggested guidance set out under Technical Guidance Document F (ventilation).
- It is submitted that this measure would be unnecessary as the extended space is useable and is actually contributes positively to the layout of the room.

6.2. Planning Authority Response to First Party Appeal

6.2.1. The PA submits the following statement:

With regard to the grounds of the appeal set out in the documentation the Planning Authority would retain the view that the attic space does not meet the required standards of Technical Guidance Document F. While this may be a building control issue and lying outside the remit of the Planning and Development Act 2000, as amended, the Planning Authority would be concerned that permitting same by means of retention would set an inappropriate precedent.

7.0 Assessment

- 7.1. The submitted first party appeal is against condition no. 3 of the relevant permission, which states:

The use of the converted attic space shall be solely for the purposes of storage ancillary to the enjoyment of the dwelling house. The converted attic space shall not be used for habitable purposes.

Reason: In the interest of residential amenity and of the proper planning and sustainable development of the area.

- 7.2. Section 37(b) of the Planning and Development Act 2000 (as amended) provides that the Board shall determine an application as if it had been made to the Board in the first instance, subject to sections 133, 138 and 139 of the Act. Section 139 of the Act provides that where an appeal is brought against a decision of a PA to grant a permission and the appeal relates only to a condition of the decision and the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted, then the Board may give to the relevant PA such directions as it considers appropriate relating to the attachment, amendment or removal by that authority either of the condition or conditions to which the appeal relates or of other conditions. In this case, I am satisfied that the Board's consideration should be limited to the subject condition only. The development to be retained is acceptable in principle on residentially zoned land and is a series of minor amendments and enlargements of an existing house to create additional residential accommodation. There are no third party submissions or observations on file and there is no question of any potential significant adverse impacts on visual or residential amenities or any other issues relating to the proper planning and sustainable development of the area.

- 7.3. The subject condition no. 3 and the grounds of appeal relate to compliance with the Building Control Regulations 1997-2015. These Regulations are a set of legal requirements for the design and construction of new buildings, extensions and material alterations to and certain changes of use of existing buildings. Matters covered include fire safety, ventilation, drainage and waste water disposal, disability access and conservation of fuel and energy. The primary responsibility for

compliance with the Building Regulations rests with designers, builders and building owners, however Building Control Authorities (Local Authorities) have powers of enforcement and prosecution where breaches of the Regulations occur. Compliance with the Regulations is therefore under a separate code from the Planning Act. The Planning Report on file recommends condition no. 3 on the basis that it is necessary to comply with the requirements of Technical Guidance Document F (Ventilation) of the Building Regulations, in particular ceiling height. The grounds of appeal include a proposal for minor amendments to the existing attic layout which, it is submitted, would achieve compliance with the specifications of TGD F.

7.4. Section 34(2)(a) of the Act states that when a PA is making a decision on a planning application, it shall be restricted to considering the proper planning and sustainable development of the area, regard being had to:

(i) the provisions of the development plan,

(ia) any guidelines issued by the Minister under section 28,

(ii) the provisions of any special amenity area order relating to the area,

(iii) any European site or other area prescribed for the purposes of section 10(2)(c),

(iv) where relevant, the policy of the Government, the Minister or any other Minister of the Government,

(v) the matters referred to in subsection (4), and

(vi) any other relevant provision or requirement of this Act, and any regulations made thereunder.

(aa) When making its decision in relation to an application under this section, the planning authority shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28.

I note that the above does not make any reference to compliance with the Building Regulations.

7.5. Section 34(4) of the Act sets out matters which may be included in conditions of permission. The matters specified generally relate to issues such as maintaining

public amenities; provision of open spaces and landscaping; the satisfactory maintenance and management of a permitted development; prevention of noise or vibrations emissions; ensuring the satisfactory completion within a specified period or determining the sequence and timing of works; reinstatement following the expiration of the specified period; disposal of construction and demolition waste; the provision of roads, traffic calming measures, open spaces, car parks, sewers, watermains or drains, facilities for the collection or storage of recyclable materials and other public facilities; appropriate naming, numbering and signage; the preservation / recording / salvage of protected structures; regulating the hours and days during which a business premises may operate. Again, there is no mention of compliance with the Building Regulations.

- 7.6. While the concerns of the PA are noted, I see no reason to restrict the use of the permitted attic accommodation on any grounds relating to the proper planning and sustainable development of the area. In addition, section 34(13) also provides that:
- A person shall not be entitled solely by reason of a permission under this section to carry out any development.*

Therefore, a grant of planning permission does not exempt the applicant from compliance with other requirements such as the Building Regulations. Moreover, if condition no. 3 is upheld by the Board, then any works to the existing attic to create habitable accommodation would not be exempted development as they would contravene the Planning and Development Regulations 2001 (as amended), which sets out limitations on exempted development including Article 9(1)(a)(i):

contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

Furthermore, while article 6(4)(a) of the Regulations provides an exemption for works to a dwelling necessary to secure compliance with the Building Regulations, this only applies to houses permitted before 1992. Therefore, in my view, condition no. 3 imposes an undue burden on the applicant as it necessitates another application for planning permission to regulate the situation and comply with the Building Regulations, as suggested in the grounds of appeal.

8.0 Recommendation

- 8.1. To conclude, it is considered that condition no. 3 does not comply with the specifications of section 34(4) of the Act as it does not relate to the proper planning and sustainable development of the area or to any of the matters set out in section 34(4). I therefore recommend that the Board should direct the Council to remove condition no. 3 of the relevant permission.

9.0 Reasons and Considerations

The Board considers that condition no. 3 does not comply with the specifications of section 34(4) of the Planning and Development Act 2000, as amended, as it does not relate to the proper planning and sustainable development of the area or to any of the matters set out in section 34(4) of the Principal Act.

Sarah Moran
Senior Planning Inspector
6th December 2016