



An
Bord
Pleanála

Inspector's Report PL09.248988.

Development	Replacement of fire damaged dwelling to include construction of a storey and a half dwelling and all ancillary site works.
Location	538 Roseglade, Straffan Road, Kill, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	17/281
Applicant(s)	Gerard and Julie Wall.
Type of Application	Permission.
Planning Authority Decision	Grant subject to conditions.
Type of Appeal	First Party v. condition.
Appellant(s)	Gerard and Julie Wall.
Observer(s)	None.
Date of Site Inspection	6 th October 2017.
Inspector	Susan McHugh.

1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area on the northern side of the N7 approximately 0.5km as the crow flies north of the town of Kill, Co. Kildare. It is accessed via junction 4 off the N7 motorway. It is located north of the Wyndham Park residential estate and just off the Straffan Road.
- 1.2. The site is bounded to the south by a two storey dwelling, to the west by an access road leading to Kill Celtic Football Club to the north. To the north the site is bounded by an open field and to the east by two single storey houses. The area is characterised by large detached single and two storey dwellings on large plots.
- 1.3. The appeal site is stated as being 0.154 ha. The existing single storey house on site is fire damaged and has a stated area of 221sqm. There are two other structures to the rear and west of the site one of which contains a mobile home where the applicant currently resides, and the other is a shed which appears to be in use as a gym.

2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on the 15/03/2017 with further plans and details submitted on 12/06/2017. The proposal as amended comprises:
 - Demolition of the existing fire damaged house, and construction of a house with a stated floor area of 251.2sqm.
- 2.2. The ridge height is 7.266m. External finishes are to be plaster and natural stone and slate finish to roof.
- 2.3. The application was accompanied by a condition report for the fire damaged house prepared by consultant engineers.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 20 conditions.

Of relevance to this appeal is condition no. 2 (a):

2. *'Prior to the commencement of development, the applicant shall submit revised house design proposals (elevations, floorplans and site layout plan) for the written agreement of the Planning Authority. Revised proposals shall address the following:*

- a) *The set back on the site shall be more in line with the adjoining dwelling to the south of the dwelling.*
- b) *The two single storey side elements shall be omitted in their entirety.*
- c) *The porch columns shall be removed and any revised porch shall have a flat roof or pitched roof design.*
- d) *The window above front door at first floor level shall be omitted and replaced by a window smaller in size and with vertical emphasis.*
- e) *The windows serving bedrooms 2 and 4 on the front elevation shall be redesigned to promote vertical emphasis.*

Reason: In the interest of the visual and residential amenities of the area.'

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

3.2.2. The **planners' reports** (dated 5/05/2017 and 7/07/2017) are the basis for the planning authority decision. It includes:

- The principle of a replacement dwelling is considered acceptable given the fire damaged nature of the dwelling on site.
- The proposed replacement dwelling has varying design styles and is of a scale and bulk which is not considered suitable to the subject site.
- The revised proposals submitted are not considered to be fully in accordance with chapter 16 of the Kildare County Development Plan, however, it is considered that revisions can be made to the proposals as part of a condition.

3.2.3. **Other Technical Reports**

Roads Section – No objection subject to conditions.

Area Engineer – No objection subject to conditions.

Environment Section – No objection subject to requirements.

Water Services – No objection subject to requirements.

EHO – No comment.

3.3. **Prescribed Bodies**

Irish Water – No objection subject to conditions.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

PA Reg. Ref. 07/2957 Permission sought in 2007 by Gerard Wall for reconstructed garden shed and new roof arrangement for same garden shed and retention of temporary mobile home on site. Application deemed incomplete.

PA Reg. Ref. 03/1591 Permission **granted** in 2003 for the retention of kitchen extension, bedroom and utility and double garage.

PA Ref. UD 4682 Possible illegal entrance case opened in 2007 and closed in 2013.

PA Ref. UD 4907 Unauthorised prefab on site case in 2007 case closed in 2010.

Site to the South

PA Reg. Ref. 08/1017 Permission **granted** in 2008 to James Maloney for alterations/revisions to include a new bay structure to the front of the bungalow and to retain the concrete bay structure poured.

5.0 Policy Context

5.1. Development Plan

Kildare County Development Plan 2017-2023

Kill is designated as a 'small town' the role of which 'is to develop as key local centres for services, with levels of growth to cater for local need at an appropriate scale and to support local enterprise.'

Chapter 4 refers to Housing.

Section 4.13.5 Replacement of Existing Dwellings

RH22: Accept the replacement of a dwelling other than a vernacular dwelling in circumstances where such a dwelling house is habitable, subject to the following;

- (i) The structure must last have been used as a dwelling and the internal and external walls and roof must be intact.
- (ii) A report from a suitably qualified competent person shall be submitted to verify that the dwelling is habitable but that replacement of the dwelling is the most sustainable option.
- (iii) Documentary evidence of the most recent date of occupation should be submitted with the application.
- (iv) The design of the proposed replacement house shall be of a high standard and its scale and character appropriate to the site and to existing development in the vicinity and to the rural area.
- (v) Normally a condition to demolish the existing dwelling will be included in any grant of permission.
- (vi) Require applicants to comply with local need criteria identified in Table 4.3 of the Plan. Normal planning considerations will be taken into account in the assessment of planning applications for replacement dwellings.
- (vii) In cases where an applicant / occupant wishes to replace an existing habitable dwelling on the same footprint and of the same or similar floor area there will be no requirement to comply with local need criteria identified in this plan.

Chapter 14 refers to Landscape, Recreation and Amenities.

Chapter 16 sets out Rural Design Guidelines.

Chapter 17 sets out Development Management Standards.

5.2. **Natural Heritage Designations**

None of relevance.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A first party appeal submitted by David Mulcahy planning consultant on behalf of the applicant relates to condition no. 2 subsection (a) only. The grounds of the appeal can be summarised as follow:

- The wording is ambiguous, and contrary to section 7.1 of the Development Management Guidelines, 2007 which requires conditions to be 'precise and unambiguous'.
- The condition in question states that 'the set back on site' shall be more in line with the adjoining dwelling to the south. However, it is not clear what set back is being referred to and what element of the set back is being referred to. It is not clear what is meant by 'more in line', but would appear to suggest a partial readjustment rather than a full readjustment, and for the front elevation of the proposed dwelling to be set back further from the front boundary.
- It is entirely unreasonable that the Council are using the situation whereby the applicant has to apply for permission for a replacement house to now try and push the dwelling back in line with the adjoining dwelling to the south. The traditional approach in such circumstances is that the replacement dwelling is allowed to be built on the general footprint of the original dwelling.
- The applicants dwelling is the original dwelling on this side of the public road, and the replacement dwelling to the south was built afterwards on foot of Reg. Ref. 06/2583. The Council had the opportunity at that stage to ensure that the building line matched that of the original (single storey, fire damaged) dwelling

but did not do so. It is unreasonable now to retrospectively address the building line arising from the unfortunate set of circumstances which have led to the current application.

- The front building line of the existing fire damaged dwelling is marginally forward of the dwelling to the south. When this is viewed in the context of the angled nature of the front building line and the bend in the public road to the front this differing building line is not conspicuous or incongruous when view from the public road and is very minor.
- It is accepted that the building line of the new dwelling does marginally extend past that of the existing dwelling. The applicant is prepared to pull back the building line in order to match that of the existing dwelling, which is considered a reasonable and balanced approach.
- There are only two dwellings to the south side of the public road in this instance and the visual impact of a discordant building line would only really be evident from a visual perspective if there was a row formed by multiple dwellings with a uniform building line. Given that there are only two dwellings involved and given the context there is no material impact in respect to the building line.
- The applicant is confined to a wheelchair and the importance of have a decent sized back garden is very important in terms of having an amenity area to enjoy.
- The applicant is also very concerned about the potential close proximity of the construction build to their existing mobile home accommodation.

6.2. **Planning Authority Response**

The planning authority had no further comments.

6.3. **Observations**

None.

7.0 Assessment

7.1. Having regard to the nature and scale of the development and the specific issues arising, that being a 1st Party appeal against Condition number 2 subsection (a) of the planning authority decision, I am of the opinion that the determination of the application as if it had been made to the Board in the first instance is not warranted. In that regard, I note the provisions of section 139 of the Planning and Development Act 2000 (as amended). The assessment, will therefore, be confined to the specific appeal of Condition number 2 subsection (a) of the planning authority decision.

7.2. I consider the key issues in determining this appeal as follows:

- Building Line
- Appropriate Assessment.

7.3. Building Line

7.3.1. The existing fire damaged single storey house on site is currently set back approximately 11m from the public road. The proposed replacement two storey house is proposed to be set back approximately 9.5m from the public road, which is approximately 1.5m forward of the existing fire damaged house. The planning authority had concerns in relation to the proposed building line which was considered to be located too far to the front of the building line of the adjoining house to the south. The adjoining house to the south is set back approximately 15m narrowing to 10m from the public road.

7.3.2. I concur with the applicant that the wording of the condition is ambiguous and there is no clear rationale presented by the planning authority for the inclusion of this condition.

7.3.3. From my site inspection I note that there is a very mature boundary hedge between the existing house on site and the adjoining house to the south, and note also the bend in the road as outlined by the applicant in their appeal. I would also concur with the applicant that given there are only two houses on this side of the road, that there is no clear established building line. I would also agree with the applicant that it would seem unreasonable to require the replacement house to be set back

potentially by a further 5m when the convention for building a replacement house would be to build within the footprint of the original house.

7.3.4. I note the applicants' circumstances and accept that in this instance the retention of a larger private rear garden is warranted. I consider that the proposal by the applicant, to set the proposed house back in line with the original house, to be a reasonable compromise that will not impact on the residential and visual amenities of the adjoining area.

7.3.5. In summary, I am satisfied that the proposed replacement house should be set back in line with the existing house and Condition No. 2 (a) should be modified accordingly.

7.4. Appropriate Assessment

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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 the Board consider the appeal in the context of section 139 of the Planning and Development Act 2000 (as amended). I further recommend that the Board direct the planning authority to modify Condition No. 2 (a).

9.0 Reasons and Considerations

Having regard to the existing fire damaged house on site and the relationship with the existing house to the south, it is considered that the proposed replacement house should follow the building line of the existing house on site, in order to protect the residential and visual amenities of adjacent properties, and in the interest of the proper planning and sustainable development of the area.

10.0 Conditions

2. a) The applicant shall set back the dwelling so that it follows the building line of the front elevation of the existing house which is being replaced.

Susan McHugh
Planning Inspectorate

20th October 2017