



An
Bord
Pleanála

Inspector's Report ABP-300415-17

Development	Retention permission for a development to consist of the removal of part of a single storey detached domestic garage and for the retention of the remainder of same and for retention of associated site works.
Location	2 Mark's Terrace, Scarlet Street, Drogheda, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	17711
Applicant(s)	Patrick McCloskey
Type of Application	Retention and permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Gerard Byrne
Observer(s)	None
Date of Site Inspection	23 rd March 2018
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.035 ha, is located at No. 2 St Mark's Terrace on the southern side of Scarlet Street, Drogheda, Co. Louth. The site is long and narrow (c. 5m x c. 67.5m) and is occupied by a mid-terrace two storey red brick Victorian dwellinghouse. A laneway runs in an east-west direction immediately to the rear (south) of the terrace, and the private open space associated with each of the terraced houses is located to the south of the laneway.
- 1.2. A single storey detached garage type structure is located on the southern side of the laneway within the appeal site. The garage structure is a rectangular metal framed building with a pitched roof and dark green coloured steel cladding. It extends across the entire width of the appeal site, and features roller shutter doors on its front (north) and rear (south) elevation and a number of translucent roof panels. On the date of my site inspection various building materials were being stored in front of the garage, and it appeared that construction works were taking place at the associated house.
- 1.3. A number of the other terraced houses along St Mark's Terrace also feature sheds or garages of varying types and sizes within their private open space, facing onto the shared laneway.

2.0 Proposed Development

- 2.1. The proposed development consists of the removal of part of a single storey detached domestic garage and the retention of the remainder of the garage and associated site works. The garage structure currently has a stated gross floor space of 55.33 sq m, and it is proposed to reduce this to 35.5 sq m by removing the southernmost portion of the garage.

3.0 Planning Authority Decision

3.1 Decision

- 3.1.1. Louth County Council decided to grant planning permission, and the following Conditions are noted:

- C2: The development shall be completed within 3 months of the date of permission.

Reason: To prevent unauthorised development.

- C3: The garage shall be used solely for purposes incidental to the enjoyment of the dwelling house and not for any residential, industrial, business, commercial or a [sic].

Reason: To protect the amenity of the area.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's report can be summarised as follows:

- A garage extension to an existing residential development is acceptable in principle within the 'RE' zoning objective.
- Site is located within an established residential area where there is no objection in principle to the extension of an existing residential property.
- Garage will not be viewed from Scarlet Street or the road to the west and only glimpsed views will be available from the road to the east. Whilst views are available from other dwellings within St Mark's Terrace, they will not cause harm to the character of the area nor does the garage have an overbearing impact.
- Given the limited views and modest scale of the garage, the development will not cause detrimental harm to the overall character of the area.
- Garage will not adversely impact on the amenity of the adjoining properties in terms of overshadowing or overbearing impacts or overlooking.
- Issue regarding guttering and fencing is a civil matter to be resolved between relevant parties.
- Residual amenity space of 170 sq m is acceptable.
- No appropriate assessment issues arise.
- Site is not vulnerable to flooding.

3.3. Other Technical Reports

3.3.1. None.

3.4. Prescribed Bodies

3.4.1. None.

3.5. Third Party Observations

3.5.1. Two third party observations were made and the issues raised were generally as per the appeal, as well as the following summarised issues:

- Overdevelopment and failure to address previous refusals.
- Concerns regarding future use of the building and that it may be used commercially due to its independent access through the lane.
- Large slab is present to rear of the building, and it is not clear if this will be removed. Rainwater from slab will run into neighbouring properties.

4.0 Planning History

4.1. Appeal Site

4.1.1. **Reg. Ref. 17355:** Retention permission **refused** for single storey detached domestic garage and associated site works for the following summarised reason:

- The shed by reason of its bulk, scale and materials used is totally out of keeping and has a negative and injurious impact on the residential and visual amenities of the area and thus contravenes the zoning objective for the location. Furthermore, to permit such a development would set an undesirable precedent for similar inappropriate development.

4.1.2. **Reg. Ref. 16834:** Retention permission **refused** for detached domestic garage and all associated site works for the same reason as Reg. Ref. 17355.

4.1.3. **Reg. Ref. 1663:** **Withdrawn** application to retain steel framed structure and cladding. Request for further information required applicant to submit revised plans displaying a reduction in the floor area of the shed by a minimum of 50%.

4.2. Surrounding Area

4.2.1. I am not aware of any recent relevant planning history in the surrounding area.

5.0 Policy Context

5.1. Drogheda Borough Council Development Plan 2011-2017

5.1.1. The expired Drogheda Borough Council Development Plan 2011-2017 would appear to be the most recent Development Plan pertaining to the appeal site. The appeal site and surrounding area are zoned 'Residential Existing' (RE), to protect and enhance the amenity of developed residential communities.

5.1.2. Section 6.6.8 relates to backland development and states that such development should have due regard to the character and scale of surrounding built development and respect the historic development of the area. Development on these sites should have due regard to existing surrounding development in terms of design, scale, height and building line should be in keeping with the existing development and should not be detrimental to the local existing residential amenities in the area.

5.1.3. Section 6.6.9 relates to extension to residential properties, and states that planning applications for extensions to residential properties should ensure that the proposal does not:

- Detrimentally affect the scale, appearance and character of the existing dwelling.
- Conflict with the existing building in terms of materials and finishes.
- Cause any overshadowing or overlooking on adjoining properties.
- Lead to a reduction in garden size of more than 25% or 25sq.m whichever is greater.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal was lodged by Gerard Byrne, who resides at 28 Sandyford Terrace, to the east of the appeal site. The grounds of appeal can be summarised as follows:

- Unsuitable development having regard to the zoning objective.
- Steel frame structure has been condemned previously by the Enforcement Section and three different Planners. They all agree that this building is an overbearing structure that does nothing to enhance the residential area.
- Applicant describes the building as a garage, but manufacturer's website places that size of building in the workshop category.
- Application is fraught with illegalities re: size, height and materials used and breaches trespass laws on both sides.
- Concern regarding precedent that a grant of permission would set for the area.
- Building does not meet the criteria of Class 3 of the Planning and Development Regulations 2001, as amended.
- Reduction in size does not reduce the bulk as per the instructions of the Planner in Reg. Ref. 1663.
- Kingspan cladding leaves a negative impact on the environment compared to timber sheds.
- Height is in excess of regulations.
- Gutters overhang the neighbouring properties. Appellant is certain that the parties on either side do not realise the financial implications of encroachment on their property and the resultant devaluation.
- Building dwarfs other buildings in St Mark's Terrace. There is only one other building of the same height, and that is much smaller in area.

- Adjacent garage which Planner refers to is built in materials comparable to the house and conforms to planning laws and is therefore compliant, whereas the offending workshop is not.
- In planning application Reg. Ref. 1663 the garage was for the storage of a motor bike collection and a vintage car. The collection now numbers two [sic] and the vintage car never materialised.
- Internal photographs show heavy insulation/soundproofing.
- Appellant has no objection to an extension in this area but has an issue with illegal structures that set unwarranted precedents.
- Appellant does not know what glimpse from Sandyford Terrace is being referred to by the Planner and does not know what relevance that hiding the building has.
- Building is an eyesore and impacts on neighbouring properties.
- Should permission be allowed to stand, the precedent that will be set will have far reaching consequences for the town of Drogheda.
- Appellant was not the only one to object to this development, but no consideration was given to neighbours objection in the Planner's report and that is why she did not appeal.

6.1.2. The appeal was accompanied by a number of photographs and copies of documents associated with the planning and enforcement history on the site.

6.2. Applicant Response

6.2.1. A response to the appeal was submitted on behalf of the applicant by A1 Design Services. The response can be summarised as follows:

- Other garages in the vicinity are of the same width and height and some have metal cladding on their roofs, walls and doors. Materials used are very common and are found to the rear of many houses throughout the country.
- Applicant's garage is of a larger floor area than the neighbouring garages, but the Planning Authority has granted permission for many garages over 50 sq m in floor area.

- Floor area is not excessive for the plot or intended use, which is for housing motorbikes and a car for private use.
- Garage was factory manufactured in three separate links. It is proposed to remove one link, reducing the floor area by 33%. It would not be possible to remove 50% of the building.
- The building is a domestic garage, not a warehouse. No commercial use is proposed.
- The definition that the appellant is taking from the supplier's website has no bearing in planning law. It doesn't matter what they call their structures, it's what its used for that is important.
- The appellant speculates on what the applicant's neighbours do or do not 'realise' about the development. Most of them cannot see it from their houses due to rear extensions, and a letter is enclosed from one of the neighbours confirming they have no objection to it.
- The appeal disregards the presence of the hedge and fencing which partially block the view of the structure.
- The garage is located within its own site and does not cross into other neighbours gardens. Given that those neighbours have not objected, one can only assume that they have no significant argument with the way the garage has been erected.
- Front line of the building has been recessed to provide a car parking space and a passing area for vehicles on the right of way. This is to the benefit of all residents of St Mark's Terrace.
- The only objections have been from residents of Sandyford Terrace and applicant points out that their gardens do not run up to meet the applicant's boundary. Hedges and fences obscure most of the view of the garage already.
- There is a case for permitting the applicant to retain the garage in its current state, or failing that, to reduce it by 1/3rd to 37.5 sq m.

6.2.2. The response to the appeal was accompanied by a copy of the photographs and supporting documentation which accompanied the planning application.

6.3. **Planning Authority Response**

6.3.1. The Planning Authority's response can be summarised as follows:

- Neither the Louth CDP nor the Drogheda Borough Council Plan restrict the size of a garage. The Planning Authority is satisfied that the garage is being utilised for domestic purposes and a condition to this effect has been placed on the grant of permission.
- In relation to potential precedent, each application ought to be addressed on its own merits and in accordance with proper planning and sustainable development of the area.
- Payment of death duties is not a material consideration.
- Garage is not considered to be exempted development and the applicant was correct to apply for full planning permission. The fact that the garage exceeds the limitations of exempted development would not in itself result in a refusal.
- Only a very small portion of the garage is visible from the public road. The garage does not cause detrimental harm to the overall character of the area.
- The Board is asked to uphold the Planning Authority's decision.

6.4. **Observations**

6.4.1. None.

6.5. **Further Responses**

6.5.1. None.

7.0 **Assessment**

7.1. I consider that the key issues in determining the appeals are as follows:

- Principle of proposed development.

- Design and layout.
- Residential amenity.
- Other issues.
- Appropriate assessment.

7.2. Principle of Proposed Development

7.2.1. The development for which permission and retention permission is sought relates to a garage structure with a stated domestic-related use to the rear of an existing house within an established residential area. I therefore consider the development to be generally consistent with the 'Residential Existing' zoning objective which applies to the appeal site and surrounding area, and to be acceptable in principle, subject to consideration of the planning issues identified in Section 7.1 above.

7.3. Design and Layout

- 7.3.1. The appellant makes numerous references to the non-compliance of the development with the 'conditions and limitations' set out in Class 3 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended. However, since these criteria relate solely to exempted development, they are not relevant to the subject appeal, which relates to an application for planning permission and retention permission. The development will therefore be assessed on its merits, having regard to normal planning criteria.
- 7.3.2. The appellant contends that the structure for which retention permission is sought is more akin to a workshop than a garage, that the structure is an eyesore and that the materials utilised in the structure are unsuitable with regard to the residential context of the area.
- 7.3.3. I note that the terraced houses along St Mark's Terrace feature long and narrow rear gardens (each is c. 5m wide x c. 50m long), which are separated from the houses by a shared laneway. The gardens run in a roughly north-south direction, with the laneway running in an east-west direction. The majority of the houses have constructed sheds or garages on the southern side of the laneway, with a variety of sizes, designs and materials.

- 7.3.4. Having regard to the location of the garage structure, the separation distances from neighbouring properties, and the presence of numerous sheds and garages along the laneway, I do not consider that the design and layout of the garage is out of character with the pattern of development in the area. However, while its width and height is broadly consistent with the neighbouring sheds/garages, I consider that its length of 8.265m results in it being somewhat visually dominant and overbearing in the context of a narrow row of terraced houses. Notwithstanding this, I consider that the proposal to reduce the length of the garage by one third would be an appropriate means of reducing the massing of the structure and thereby lessening its visual impact within the streetscape to an acceptable level.
- 7.3.5. With regard to the use of materials, I note that corrugated metal cladding is an increasingly commonly utilised material for garden sheds and garages. Having regard to the backland location of the garage, its lack of visibility from the wider area and the green colouring of the cladding, I consider the design and materials to be acceptable, subject to the reduction in size proposed.

7.4. Residential Amenity

- 7.4.1. Having regard to the positioning of the garage, its c. 10 metre separation distance from the rear elevations of St Mark's Terrace and the length of the gardens of adjoining properties, I do not consider that the development to be retained results in any significant overshadowing or loss of sunlight/daylight at these properties.
- 7.4.2. The appellant's property does not adjoin the appeal site, with the rear garden of No. 1 St Mark's Terrace acting as a buffer between the two sites. As a result, the garage is c. 10m from the rear boundary of the appellant's property, and c. 20m from the rear elevation of his house. A degree of screening of the garage is provided by boundary walls and planting between the appeal site and the appellant's property, with the roof structure being the primary visible element of the garage. Subject to the reduction in size of the garage, as proposed, I am satisfied that no overshadowing or overbearing impact on the appellant's property will arise.
- 7.4.3. With regard to potential impacts on residential amenity arising from the use of the garage, I note that the applicant states that it is used for the storage of his personal motorbikes and car and that no commercial use is proposed. Therefore, I do not

envisage any significant traffic impacts or noise, dust or other emissions arising. Notwithstanding this, in the interest of clarity and protection of residential amenity, I recommend that if the Board is minded to grant permission that a condition be included requiring the garage to be used solely for non-habitable uses ancillary to the main dwellinghouse and that it shall not be used for the carrying out of any trade or business or sold, let or otherwise transferred or conveyed save as part of the dwelling.

- 7.4.4. In conclusion, subject to the condition outlined above, I am satisfied given the distance to adjacent dwellings, the design and orientation of the proposed development, the established building typology of the area, and the proposed reduction in size of the garage, that the development will not seriously injure the residential amenities of properties in the area.

7.5. **Other Issues**

- 7.5.1. The appellant contends that the roof and gutters associated with the garage structure overhang the site boundary to east and west and that this encroachment will devalue adjoining properties.
- 7.5.2. I note that the appellant is not one of the parties who is affected by the claimed encroachment, and that no observations were made by the owners of the adjoining properties. The applicant has also submitted a letter from Patrick and Margaret Murray with a stated address of 3 St Marks' Terrace (i.e. the adjoining house to the west of the appeal site) stating that they have no objection to the garage. While the lack of an observation from the owner of 1 St Mark's Terrace cannot be construed as providing consent for any encroachment on their property boundary, I note that the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land and these are ultimately matters for resolution in the Courts. As section 34(13) of the Planning and Development Act 2000, as amended, states, a person is not entitled solely by reason of a permission to carry out any development. Having regard to the facts of the case, I therefore do not consider it necessary to inquire further into this matter, since any grant of retention permission will be subject to the provisions of section 34(13), placing the onus on the applicant to be certain

under civil law that he has all necessary rights in the land to exercise the grant of permission and retention permission.

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development, which relates to the construction of a garage type structure in the rear garden of an existing house in an established and serviced residential area outside of any Natura 2000 sites, I am satisfied 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 retention permission and planning permission should be granted, subject to conditions, as set out below.

9.0 **Reasons and Considerations**

- 9.1. Having regard to the zoning objectives for the area and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

10.0 **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. The reduction in the size of the garage shall be completed in accordance with the details shown on drawing number PMcC/17/06, as submitted with the planning application, within 3 months of the date of this order.

Reason: In the interests of visual and residential amenity.

3. The garage shall be used solely for non-habitable uses ancillary to the main dwellinghouse and shall not be used for the carrying out of any trade or business or sold, let or otherwise transferred or conveyed save as part of the dwelling.

Reason: In the interest of clarity and of residential amenity.

4. Water supply and drainage arrangements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Niall Haverty
Planning Inspector

26th March 2018