



An
Bord
Pleanála

Inspector's Report ABP-301434-18

Development	(a) planning permission for new entrance and driveway, and to close up existing entrance and driveway, (b) retention of dormer type bungalow and associated site works
Location	Johnstownbridge, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	17/985
Applicant(s)	Phelim & Patricia Farrell
Type of Application	Permission and retention permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party
Appellant(s)	Mary Farrell, Paddy Farrell, Eoin Farrell
Observer(s)	None
Date of Site Inspection	5 th July 2018
Inspector	Ciara Kellett

1.0 Site Location and Description

- 1.1. The appeal site is located in Johnstownbridge, Co. Kildare. Johnstownbridge is close to the Meath border and just south of the M4 motorway. The R402 regional road is the main street running through the village linking the village to the M4 and to Edenderry to the south. Johnstownbridge is c. 2km south-west of Enfield, Co. Meath and c.17km west of Maynooth, Co, Kildare. The Johnstown Estate Hotel is c.1.3km north-east of the village.
- 1.2. The site itself is located on the northern side of the Main Street in the village centre. There is an existing dormer bungalow on the site which is bounded by agricultural land to the north. There are two dwellings to the south-west and south-east of the site owned by the appellants. The site is T shaped with an existing agricultural type access to the south-west of the site forming the lower half of the T. The overall site area is stated as being 0.16Ha.
- 1.3. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. Retention permission is sought for the dwelling which is stated as being 233sq.m in area. The dwelling is dormer style with a projecting gable to the front and a conservatory to the side. The ridge height is 7.3m. A dwelling was permitted on the site under planning permission Reg. Ref. 08/653.
- 2.2. Permission is sought to open a new entrance between the two existing dwellings to the south-west and south-east as well as existing sheds, and close off the entrance to the south-east.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to 9 conditions. Condition no.3 required that landscaping should be carried out within 3 months of the grant of permission, and photographic evidence of such is to be submitted to the Planning Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority's decision. In summary, it states:

- With respect to the entrance, it is noted that the Area Engineer and the Transportation Department have no objections subject to conditions. The proposed entrance is considered acceptable.
- Notes that the dwelling permitted under Reg. Ref. 08/653 was the same area, i.e. 233sq.m, and the same ridge height, i.e. 7.3m.
- Considers that the revisions to the dwelling are relatively minor and acceptable.
- Considers principle of a dwelling on this site has already been established by the original grant of permission, and the dwelling is constructed largely similar to that permitted.
- Notes there are discrepancies with the finished floor level and notes that the landscaping subject to condition of the earlier permission has not been carried out. Considers that a landscape plan and a timeframe for delivery should be submitted by way of Further Information. Also considers that the discrepancies in floor levels should be addressed, as well as clarification of the site boundaries and works as detailed in the public notices with respect to the site entrances.
- The applicant responded to the Further Information request. The second Planner's report reviews the information response.
- It is noted that there appears to have been a surveying error on the original drawings (Reg. Ref. 08/653) with respect to the finished floor level. The dwelling is constructed as per the submitted drawings for the subject application at 76.45m, rather than the original reference to 74.5m. Planner notes discussion with the Enforcement Officer (Case Ref. ED5732) whereby the levels as submitted on the Further Information drawings accurately reflect what is currently constructed.

- It is not considered that the higher dwelling results in overlooking, or impinges on the residential amenities of the existing street front dwellings. Considers this acceptable.
- Notes a Landscaping Plan was submitted with the response which is considered acceptable, however having regard to the open nature of the site, considers measures should be carried out in a strict timeframe.
- With respect to the entrance, it is stated that the existing entrance was temporary only and is a right of way to adjoining lands. Details from the land registry were submitted. Details pertaining to original entrance are noted where the entrance permitted relates to that currently proposed.
- Concludes that the dwelling is largely similar to that previously permitted, albeit with a higher floor level, notes no objections from internal departments and recommends permission is granted subject to conditions.

The decision was in accordance with the Planner's recommendations.

3.2.2. **Other Technical Reports**

- **Area Engineer:** No objection subject to conditions
- **Water services:** No objection subject to conditions
- **Environment:** No objection subject to conditions
- **Transportation:** No objection subject to conditions

3.3. **Prescribed Bodies**

- **Irish Water:** No objection subject to conditions

3.4. **Third Party Observations**

An objection from the appellants was lodged. It is similar to the appeal and is detailed in Section 6 below.

4.0 Planning History

- **Reg. Ref. 08/653:** Permission was granted to the applicants in February 2009 for the development of a dwelling on the subject site. An Application for Leave to Appeal by two of the current appellants was refused by the Board (Ref. 09.LV2953). Leave was refused because the Board did not consider that it had been shown that the application permitted will differ materially by reason of conditions.
- **Enforcement ED5732:** Enforcement notice issued – case due for Court hearing in May 2018.

On the site to the south-west:

- **Reg. Ref. 07/1681:** Permission was granted for a dwelling in October 2007 to one of the current appellants.

5.0 Policy Context

5.1. Kildare County Development Plan 2017 - 2023

- 5.1.1. Volume 2 of the County Plan refers to villages. Johnstownbridge is listed as a Village in the Plan. Policy **VRS1** states:

Facilitate local housing demands together with the provision of local and community services / facilities and local employment opportunities throughout the villages and rural settlements in accordance with the principles of proper planning and sustainable development.

Land Use zoning objectives are set out for the villages. The subject site is located in 'A' zone as illustrated on Map V2-2.9:

Village Centre: *To provide for the development and improvement of appropriate village centre uses including residential, commercial, office and civic use.*

5.2. Natural Heritage Designations

The River Boyne and River Blackwater SAC (Site Code 002299) is located c.7.5km to the north-west. The River Boyne and River Blackwater SPA (Site Code 004232) is located c. 7.5km to the north-west.

Ballynafagh Bog SAC (Site Code 000391) is located c.12km to the south-east.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal against the planning authority's decision to grant permission has been lodged. In summary it states:

- Reference made to concerns with the administrative procedures of the previous application on the site, Reg. Ref. 08/653. The appellants sought Leave to Appeal against the original decision, because it is stated that no Site Notice was ever erected and they were unaware of the application until it was too late. The Board did not grant Leave to Appeal to the appellants.
- Consider the development was not carried out in accordance with the permission Reg. Ref. 08/653, and as such is unauthorised development and it has failed to comply with 11 conditions.
- Application is invalid as no Site Notice was erected at the existing entrance, nor were works identified on the existing entrance within the red line boundary, and the Landscape Plan shows works occurring on the appellant's property. No blue line was identified on the drawing. The Planning Authority should have declared the application invalid.
- Consider that the applicant has shown contempt towards the appellants by making an application for the entrance on lands outside the applicant's ownership.
- Refer to section 162 of the P&D Act and note that enforcement proceedings continue to be deferred pending the determination of the subject application.

- Proposal is on an elevated site 1 metre higher than the appellant's dwelling and is visually prominent.
- Orientation of the house and level difference gives rise to serious dis-amenity.
- Proposal constitutes backland development which gives rise to serious overlooking of the rear of the appellant's home and back garden. No planting has been provided which has compounded the severity of the impact.
- Proposal should be refused for past failure to comply.
- Proposal would result in devaluation of appellants' properties.

6.2. Applicant Response

The applicant has responded to the third party appeal. In summary it states:

- The applicant's father is deceased since 2006 and the lands were to be subdivided and transferred to his sons and daughters – the administration of the estate is still not complete.
- The house for which permission was received under Reg. Ref. 08/653 was commenced in 2009 and was occupied by the applicants in 2014. Connections to public services were obstructed by the non-administration of the estate.
- Only minor changes were made to the dwelling as permitted under Reg. Ref. 08/583.
- The Planning Authority validated the application – existing access to the house is presently over a right of way. The planning application seeks permission to construct a new entrance over the applicant's lands, and to close his entrance onto the right of way, which serves the remainder of the family lands to the rear.
- There was an error on the original floor plan regarding levels – but was corrected as indicated on the submitted plans.
- The house is in the village centre zoning and it 35m from Eoin Farrell's house and 45m from Paddy Farrell's house, greater than the standard 22m.

- Applicant undertakes to carry out all screen planting in the next planting season.

6.3. **Planning Authority Response**

The Planning Authority responded stating that it has no further comment and refers to the Planning Reports.

7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Procedural matters
- Residential amenities
- Appropriate Assessment

7.1. **Principle of Development**

- 7.1.1. Permission was granted in February 2009 for the development of a dwelling of 233sq.m in area with a ridge height of 7.3m. The subject application seeks to retain a dwelling of 233sq.m in area and 7.3m ridge height. Within the Planning Authority's Planner's Report, comparison is made between the as-permitted development in 2009, and the as-constructed development for which retention permission is sought. The Planner considers that the revisions to the dwelling as-constructed are minor and considered to be acceptable. Residential amenities will be addressed below, but I am in agreement with the Planning Authority that the amendments to the dwelling are minor.
- 7.1.2. The appellant considers that because this is an application for retention of the existing house and not minor revisions, the application must be dealt with *de novo* and the Board should view this application as if the dwelling was not constructed.

7.1.3. Having regard to the location of the development on Village Centre zoned lands which provide “*for the development and improvement of appropriate village centre uses including residential*”, and should the Board wish to consider this dwelling *de novo*, I am satisfied that the principle of development in this location is acceptable.

7.2. Procedural Matters

7.2.1. The appellants make a number of points regarding procedural matters which I will address in turn. I draw the Board’s attention to Section 34 (13) of the Planning and Development Act which states “*A person shall not be entitled solely by reason of a permission under this section to carry out any development*”.

7.2.2. Enforcement Proceedings

The appellants refer to issues with a previous planning permission (Reg. Ref. 08/653) which permitted a dwelling on the site. The appellants state that the original application, and hence the permission granted, is invalid due to breach of Section 34(1) for failing to erect a Site Notice for that application. It is further stated that the applicant did not comply with 11 conditions under Reg. Ref.08/653, nor has he complied with the Enforcement Notice. I note that enforcement proceedings are a matter for the Planning Authority and not the Board.

7.2.3. Site Notice for subject application

The appellants state that no Site Notice was erected on the entrance to be closed-up with respect to the subject application. The Planning Authority were satisfied with the location of the Site Notice, and the file was declared valid. I noted during my site visit that the Site Notice was still in place, on the shed that bounds the roadside between both entrances.

7.2.4. Works within the red line boundary

The appellants state that the entrance to be closed-up is not included within the red line boundary. A map supplied by the appellants indicates that the entrance is highlighted as a right of way. The amended Site Layout Plan submitted at Further Information stage by the applicant clarifies that this entrance to the house (from the right of way) will cease, but the entrance/right of way will be used to service the balance of the family lands to the rear.

I note that in response to the appeal, the applicant states that “*The Planning Application seeks permission to construct a new entrance over the applicant’s land and close his entrance onto the right of way which serves the remainder of family lands to the rear.*” (my emphasis). Having regard to the amended Site Layout Plan submitted at Further Information stage and the applicant’s response to the appeal, I am satisfied that there are no works planned for this entrance and the red line satisfactorily identifies the location of any works. Should the Board consider granting permission, I recommend that for the avoidance of doubt, a condition is appended to clarify that no works are permitted with respect to the existing entrance onto the Main Street as part of any permission.

7.2.5. *Land ownership*

The appellants consider that the Landscape Drawings submitted at Further Information stage include lands not within the ownership of the applicant. A reference to a ‘proposed new entrance’ appears on the drawing adjacent to one of the appellant’s dwellings. I am of the view that this is an error on the landscape drawing. I am satisfied that the Site Layout Plan clearly indicates the location of the proposed new entrance and am of the opinion that this error on the Landscape Plan did not prejudice any third party.

7.2.6. *Conclusion*

In conclusion, I am satisfied that any enforcement proceedings, such as compliance with conditions, are not a matter for the Board, and consider that the works proposed in the subject application are as described in the documentation on file, within the red line, and as detailed on the revised Site Layout Plan.

7.3. **Residential Amenities**

- 7.3.1. The appellants are of the view that their residential amenities are seriously impacted for a number of reasons including: finished floor level differences, orientation, back-land development, lack of screen planting, and devaluation of property.
- 7.3.2. With respect to finished floor levels, it is stated that the dwelling as constructed is c.1.5m higher than that permitted originally under Reg. Ref. 08/653. It is stated by the applicant in response to Further Information that there was a surveying error on the original application which was corrected in the subject application. The appellant

considers that the dwelling to be retained is significantly higher than one of the appellant's dwellings and is therefore visually dominant and has an overbearing impact on the neighbouring properties.

- 7.3.3. The applicant in response states that the house is 35m and 45m respectively from the appellants' dwellings. Having visited the site, I am satisfied that the slightly higher elevation and orientation are not seriously impacting on the appellants' residential amenities. I do agree that the landscaping could be improved and that should the Board grant permission, I recommend that a condition is appended to require landscaping to be carried out within the first planting season.
- 7.3.4. I accept that the dwelling could be construed as being backland development, however the site is zoned for development and has full access to road frontage. It is not unique in the village. Having regard to the distances between dwellings, I am satisfied that there will not be serious overlooking of rear gardens.

7.4. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and for retention 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 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**

I recommend that permission and retention permission should be granted for the proposed development subject to conditions.

9.0 **Reasons and Considerations**

Having regard to the nature, scale and location of the dwelling for which retention permission is sought, and the new entrance for which permission is sought, and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the amenities of the area or of property in the vicinity. The development for which

retention permission and permission is sought would, therefore, 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, as amended by the further plans and particulars submitted on the 22nd day of February 2018, 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 landscaping scheme shown on Drawing no. 03/M/17, as submitted to the planning authority on the 22nd day of February, 2018 shall be carried out within the first planting season following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed entrance shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual 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.

5. This permission shall not be construed as any form of consent or agreement to carry out works or close off the existing entrance onto the Main Street (R402 road).

Reason: In the interest of clarity.

6. The developer shall pay to the planning authority a financial contribution 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, as amended. The contribution shall be paid prior to 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Ciara Kellett
Senior Planning Inspector

6th July 2018