



An
Bord
Pleanála

Inspector's Report ABP-301554-18

Development	Retention & completion of partially constructed domestic garage.
Location	Drumquill, Castleblaney, Co. Monaghan
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	17/357
Applicant(s)	John Brennan
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	Third Party
Appellant	Patrick Carragher
Observer(s)	Martin Molloy
Date of Site Inspection	15 th September 2018
Inspector	Karla Mc Bride

1.0 Site Location and Description

- 1.1. The appeal site is located to the NW of Castleblaney in County Monaghan and to the N of the R183 regional road to Monaghan town. The surrounding area is rural in character and there are several farms and detached houses in the vicinity. The site is located along a rural laneway which provides access to a number of houses and farms. There is a farm yard and agricultural buildings to the W of the site. The overall landholding comprises lands on the N and S side of the laneway and part of the N section is occupied by the rectangular shaped appeal site.
- 1.2. The site comprises a detached 2-storey house and a partially constructed detached storey and a half garage structure which are located perpendicular each other. There is a garden to the rear W of the house and a large hard standing area to the fore of the house and garage. The site boundaries to the N, E and W are defined by a mix of fences and hedges whilst the S boundary with the laneway is undefined.
- 1.3. There is a wastewater treatment system located in the S section of the overall landholding and a small pillar box structure which houses an electricity meter along the laneway to the E of the site on the N side of the lane.
- 1.4. Photographs and maps in Appendix 1 describe the site and environs in more detail.

2.0 Proposed Development

- 2.1. Permission is being sought to retain & complete a partially constructed garage:
 - The existing c.93sq.m. structure is c.9.5m wide, c.8.5m deep & c.7.3m high.
 - The existing structure comprises:
 - A ground floor area (c.70sq.m.) & a loft area (c.22.8sq.m.)
 - 3 x ground level doors & 3 x dormer windows in the front elevation
 - 3 x dormer windows in the rear elevation
 - Windows at ground & first floor levels in the side & rear elevations
 - Amended by FI to exclude the loft area, dormer windows & first floor windows.

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of Further Information in relation to a justification for the large scale, design and siting of the garage, and an ABP Section 5 determination regarding (a) a pillar structure which houses and electricity meter (RL3811) and (b) associated site works and connection to septic tank (RL3594), which are development and not exempted development, the planning authority decided to refuse planning permission for 1 reason which stated:

- In accordance with S.35 of the Planning and Development Act 2000 as amended, planning permission cannot be granted at this time in respect of the proposed development as the site works (including site clearance and connection to a septic tank) associated with the structure/garage to which this application relates, along with an associated pillar structure are unauthorised development.

Planning Reports: Planning Officer recommended a refusal of planning permission.

3.2. Third Party Observations

Two letters of objection from Patrick Carragher & Martin Molloy who raised concerns in relation to proximity to neighbouring agricultural shed; extensive planning & enforcement history; no reference to WWTS; unauthorised pillar box; inaccuracies in drawings; excessive scale for domestic use; and not located to rear of house.

4.0 Planning History

- 4.1. There is a lengthy and complex planning, referral and enforcement history which relates to both the appeal site and the lands on the S side of the laneway, which are indicated as being within the ownership of the applicant.

Planning applications:

ABP-301047-18: Permission refused to Eamon Brennan for the construction of a storey and a half dwelling house, WWTS and new entrance on lands to the S of the subject site, which are in the applicant's ownership. Permission refused for 2 reasons related to adverse visual impact and inadequate WWT proposals relative to the site characteristics. Concerns also raised about sightlines and traffic hazard.

Reg. Ref. 16/403: Planning application to change use of existing house to domestic storage, construction of new house, upgrade of existing septic tank with new wastewater treatment system and other works. Application deemed invalid.

Reg. Ref. 16/235: Planning application for a storey and a half dwelling house, upgrading of existing septic tank system with new wastewater treatment system and percolation area and other works. Application withdrawn by applicant.

Reg. Ref. 16/41: Planning application for extension to existing house and retention of waste water treatment system and percolation area. Application deemed withdrawn following failure to respond to request for FI. This included a request to provide additional information in respect of the wastewater treatment system.

Reg. Ref. 14/217: Permission refused for the retention and completion of a partially constructed storey and a half extension to the side of existing dwelling house and ancillary site development works. Refused for 3 reasons related to: - proximity to agricultural building, excessive scale of extension and precedent. Following the receipt of FI the PA accepted that the residential use of the existing house had not been abandoned but that there was no independent evidence to confirm the planning status of the septic tank.

Referrals:

ABP-301312-18: Current section 5 referral, submitted by Patrick Carragher, asking whether (1) Installation of septic tank and percolation area (2) Construction of a house and connection to septic tank (3) Erection of pillar box on right of way is or is not development or is or is not exempted development.

PL18.RL3811: Section 5 referral, submitted by Martin Molloy, asking whether the construction of a pillar structure to house an electricity meter on the edge of a laneway is or is not exempted development. The Board determined that it is development and is not exempted development.

PL18.RL3594: Section 5 referral, submitted by Patrick Carragher, asking whether the construction of a house, site clearance and connection to septic tank is development or is not exempted development. The Board altered the wording to ask whether the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to septic tank is development or is not exempted development. The Board determined that it is development and is not exempted development.

PL18.RL3532: Section 5 referral, submitted by Martin Molloy, asking whether the installation of a septic tank and percolation area is or is not development or is or is not exempted development. The Board determined that it is development and is not exempted development.

Ref. 10/581: The Council issued a Declaration stating that the use of a structure as a dwelling house was not exempt development. The basis of the declaration was that the residential use of the structure had been abandoned and that the structure was derelict prior to the commencement of refurbishment/restoration works.

Unnumbered Section 5 Referral (July 2016): Section 5 Referral regarding works to reinstate the residential use of a derelict structure of which the residential use had been abandoned. No record of a Declaration being issued.

Ref. E16/27: Section 5 Referral regarding works to reinstate the residential use of a derelict structure of which the residential use had been abandoned. The PA requested the referrer to submit evidence that the dwelling had become abandoned and derelict, no indication as to whether such evidence was submitted.

Enforcement:

Ref. E14/36: Enforcement file, including a number of enforcement notices requiring the demolition of an unauthorised structure.

5.0 Policy Context

5.1. Monaghan County Development Plan 2013 to 2019

Zoning: the site is located on un-zoned agricultural lands.

Core Strategy Map: the site is designated as being within a 'Stronger Rural Area'.

Policy RDP14: states that garages should be located behind the building line of the proposed dwelling, and should be reflective of it in terms of design and finishes. The scale of the garage should reflect its proposed use. Where the proposed garage is in excess of 80sq.m., the onus will be placed on the applicant to justify what reasonable domestic use would necessitate the size of the garage proposed.

Policy RDP16: states that a residential unit shall not be permitted within 100m of an agricultural building, except where the owner and occupier of the agricultural building has provided written consent to the Planning Authority.

6.0 The Appeal

6.1. Grounds of Third Party Appeal

Patrick Carragher who owns the neighbouring farm raised the following concerns:

- Dissatisfied with wording of PA's reason for refusal given that the case has been ongoing for c.8 years.
- Original works to the derelict building were determined to be unauthorised & this structure is within 100m of an agricultural shed & no consent given.
- The garage structure is even closer & no consent given.
- The use of the garage relates to the original unauthorised building and is for domestic purposes associated with a house.
- Confusing ownership & inaccuracies on Council's website.

6.2. Observers

Martin Molloy raised the following concerns:

- The site clearance works were associated with an authorised structure and the relocated fill damaged a natural boundary and altered a watercourse.
- ABP determined that the WWTS is not exempt & it is therefore unauthorised.
- Original dwelling was deemed unauthorised by the PA under a S.5 declaration.
- The current structure would facilitate an unauthorised development.
- The doors are too narrow to accommodate a car and it is possible that the garage will be put to a different use.
- Pillar box that houses the electrical connection to power the WWTS has deemed to be unauthorised by ABP, with no current plans to rectify this.
- Family members have submitted applications for houses on nearby lands.
- The S.35 reason for refusal should have been made to the High Court and not ABP, the Council replied that it refused permission under S.34(3).
- Conflicting information of the Council's website.

6.3. First Party Response

No submission received.

6.4. Planning Authority Response

No submission received.

6.5. Prescribed Bodies

No submissions received.

7.0 Assessment

The main issues arising in this case relate to the following:

- Jurisdiction
- Principle of development
- Visual & residential amenity
- Other issues

7.1. Jurisdiction

The use of Section 35 of the Planning and Development Act, 2000 (as amended) in the Councils' reason to refuse planning permission may have a bearing on the Board's ability to adjudicate on this case.

There is an extensive planning, referral and enforcement history on the appeal site and the overall lands which are indicated as being in the ownership of the applicant. Under the current application, the applicant is seeking planning permission to retain and complete an existing partially constructed detached storey and a half domestic garage. The Council decided to refuse planning permission for 1 reason which stated that "In accordance with section 35 of the Planning and Development Act 2000 as amended, planning permission cannot be granted at this time in respect of the proposed development as the site works (including site clearance and connection to a septic tank) associated with the structure/garage to which this application relates, along with an associated pillar structure are unauthorised development."

Section 35 of the Planning and Development Act, 2000 originally dealt with the refusal of planning permission for past failures to comply with a previous grant of planning permission and/or the attached conditions. However, section 9 of the Planning and Development (Strategic Infrastructure) Act 2006 amended section 35 to provide that a planning authority may, where it forms the opinion that there is a real and substantial risk that a proposed development would not be completed in accordance with the permission being sought, refuse permission without prior

authorisation from the Courts, to a person or company who has failed substantially to comply with a previous permission or who has carried out substantial unauthorised development, or has a conviction for an offence under this Act.

Under section 35 (4) (a), the planning authority is required to give the applicant prior notification that it considers that there are good grounds for its being able to form an opinion by specifying the substantial unauthorised development it intends to take into consideration. It is also required under section 35 (4) (b) to give the applicant an opportunity to respond. Having considered the applicant's response submissions under section 35 (5), the planning authority may then proceed to form the opinion that there is a real and substantial risk that a proposed development would not be completed in accordance with the permission being sought and proceed to refuse permission where the applicant has (in this case) carried out substantial unauthorised development.

Where a planning authority refuses permission under section 35 of the Act, the applicant can apply to the High Court to have the refusal annulled under section 35 (6). The High Court may confirm the decision of the planning authority, annul the decision and direct the authority to consider the applicant's application for planning permission without reference to the provisions of section 35, or make such other order as it thinks fit. Where the High Court confirms the decision of the planning authority, there is no provision for the applicant to appeal to the Board.

There is no indication on the case file that the planning authority gave the applicant prior notification and an opportunity to respond under the provisions of section 35 or that the applicant applied to the High Court to have the decision of the planning authority to refuse planning permission either annulled or judicially reviewed.

However, it is noted that this is a Third Party appeal against the decision of the planning authority to refuse planning permission and there is no apparent prohibition on this course of action in the Planning and Development Act, 2000 (as amended). I am therefore satisfied that the appeal should be assessed in the normal manner.

7.2. Principle of development

The development proposed for retention is located within a rural area that is covered by the Monaghan County Development Plan 2013-2019 and on lands that are identified as being a Stronger Rural Area in the Core Strategy, and the works are acceptable in principle.

There is an extensive planning, referral and enforcement history for the site and overall lands (refer to section 4.0 above) which may have a bearing on the Board's consideration of the development proposed for retention.

According to the planning history of the site, the applicant refurbished and restored a dwelling house on the site and then erected the subject structure (garage) along with an interconnecting structure that was subsequently removed.

In relation to the original 2-storey house, there have been several Section 5 Referrals and Declarations in relation to the use of a derelict structure as a dwelling house after the residential use had been abandoned, and such works were determined to be development and not exempt development. However, during the planning authority's consideration of a planning application to retain a partially constructed extension to the side of this house (under Reg. Ref. 14/217), it was satisfied following the receipt of Further Information that the residential use of the house had never been abandoned and that the use was authorised.

In relation to the subject structure, permission was refused under Reg. Ref. 14/217 for the retention and completion of a partially constructed storey and a half extension to the side of the existing 2-storey dwelling house and ancillary site development works. Permission was refused for 3 reasons related to proximity to existing farm buildings and the excessive scale of extension relative to the size of the existing house. The site is now occupied by the existing 2-storey detached house and the partially constructed storey and a half detached structure which is the subject of this appeal, whilst the interconnecting section no longer exists.

The planning authority also noted during its consideration of Reg. Ref. 14/217 that no permission existed for a septic tank or wastewater treatment system within the site area and that no details were submitted to demonstrate how wastewater from the site would be dealt with. In response to a Further Information request, the applicant stated that the existing septic tank system serving the existing dwelling house was upgraded in 2006 and that the system is registered with the Council under the 2012 Regulations. However the applicant did not respond to the Further Information request to include the retention of the septic tank system in the planning application. In the absence of independent evidence regarding installation dates the system was deemed to lie outside the remit of the application and would be subject to further investigation through enforcement proceedings.

More recently, the Board dealt with two Section 5 Referrals (by Patrick Carragher and Martin Molloy) regarding works at the subject site and along the adjoining laneway to the E of the site. Under PL18.RL3594 the Board determined that the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and a connection to a septic tank is development and is not exempted development, although the Inspector noted that a connection between the structure and a septic tank was not apparent. The Board also determined under PL18.RL3811 that the construction of a pillar structure to house an electricity meter on the edge of a laneway is development and is not exempted development.

Under the current application, the applicant is seeking planning permission to retain and complete the existing partially constructed detached storey and a half domestic garage (which is part of the structure referred to above under Reg. Ref. 14/217 and the same structure referred to above under PL18.RL3594). The Council decided to refuse planning permission for 1 reason which stated that "In accordance with S.35 of the Planning and Development Act 2000 as amended, planning permission cannot be granted at this time in respect of the proposed development as the site works (including site clearance and connection to a septic tank) associated with the structure/garage to which this application relates, along with an associated pillar

structure are unauthorised development.” The issues surrounding the Council’s use of Section 35 have been addressed in section 7.1 above.

The current application represents a further attempt by the applicant to regularise the planning status of the now detached storey and a half structure on the site.

This structure was determined to be development and not exempted development by the Board under PL18.RL3594, along with all associated site development works including site clearance and connection to a septic tank. Based on my site inspection and my examination of the submitted plans, there is no physical evidence that the structure is connected to a septic tank and the structure does not contain any bathrooms or a kitchen. Furthermore, the front elevation contains 3 garage doors and the applicant has committed to removing the internal first floor loft area and the dormer and first floor windows by way of the further information response. This commitment could be reinforced by a planning condition which would also prohibit a connection to a septic tank system.

In relation to pillar structure which was determined to be development and not exempted development by the Board under PL18.RL3811, it is noted that this insubstantial structure is located outside of the site boundary.

Having regard to the foregoing, I am satisfied that the development proposed for retention is acceptable in principle.

7.3. Visual and residential amenity

The development proposed for retention is located within a sparsely populated rural area which is not covered by any sensitive heritage designations and it is located to the E of existing agricultural buildings and to the N of the existing house on the site.

The garage is c.9.5m wide, c.8.5m deep & c.7.3m high. Under the original proposal it would be c.93sq.m with a first floor loft area and it contains 3 x ground level garage doors, 6 x dormer windows in the front and rear elevations, and windows at ground & first floor levels in the side and rear elevations. The structure was amended by way of FI to provide for the exclusion of the loft area (which would reduce the overall floor area to c.70sq.m.) and to remove all of the dormer and first floor windows.

Policy RDP14 of the Development Plan states that garages should be located behind the building line of the proposed dwelling, and should be reflective of it in terms of design and finishes, that the scale should reflect its proposed use and that applicants should be required to justify the need for a garage in excess of 80sq.m.

The existing house and the garage proposed for retention are located perpendicular to each other, the garage is located to the NE of the existing house and it is set back a substantial distance from the laneway and other site boundaries, which is considered acceptable in terms of visual amenity. The scale and design of the garage proposed for retention, as amended by way of Further Information, would not have an adverse impact on the visual amenities of the area, subject to the omission of the first floor loft and all of the dormer and first floor windows.

The garage proposed for retention is not located in close proximity to any existing dwelling houses and it would not have an adverse impact on the existing house on the site by way of overshadowing or visual intrusion.

Policy RDP 16 states that a residential unit shall not be permitted within 100m of an agricultural building, except where the owner and occupier of the agricultural building has provided written consent to the Planning Authority. Although the garage proposed for retention would be located c.40m to the SE of existing agricultural sheds, it is noted that this policy only applies to dwelling houses (to protect the residential amenities of future occupants) and not to domestic garages.

7.4. Other issues

Appropriate Assessment: Having regard to the nature and scale of the development proposed for retention and the separation distance to the nearest sensitive location and lack of a direct connection, there is no real likelihood of significant effects on any European sites arising from the development proposed for retention and the need for Appropriate Assessment screening is not required.

Environmental Impact Assessment: Having regard to the nature and scale of the development proposed for retention and the separation distance to the nearest sensitive location, there is no real likelihood of significant effects on the environment

arising from the development proposed for retention. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Environmental services: It was not apparent from my site inspection that the structure is connected to a septic tank or wastewater treatment system.

Vehicular access: The site boundary with the laneway is undefined and access is via the large hardstanding area to the fore of the house and partially constructed garage structure. A condition should be attached which requires the reinstatement of a hedgerow and the provision of a vehicular entrance which has adequate sightlines in both directions along the laneway.

8.0 Recommendation

Arising from my assessment of this appeal case I recommend that planning permission should be granted for the development proposed for retention for the reasons and considerations set down below, subject to the attached conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the County Monaghan Development Plan 2013 to 2019, and to the nature, and scale of the development proposed for retention, it is considered that subject to compliance with the following conditions, the development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. The development proposed for retention would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development proposed for retention shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further information received by the planning authority on the 9th day of March 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 first floor loft area, the dormer windows and the first floor windows shall be removed in their entirety and the development shall be completed in accordance with Drawing nos. P100.00 and P101.00 of the plans and particulars lodged with the further information received by the planning authority on the 9th day of March 2018. The works shall be carried out within 3 months of the date that this planning permission is granted.

Reason: In the interest of clarity, visual amenity and the proper planning and development of this rural area.

3. The garage shall be used solely for non-habitable ancillary domestic and private purposes and not for any commercial, industrial, business or trade purposes.

Reason: In the interest of clarity and the proper planning and development of this rural area.

4. For the avoidance of doubt this permission does not permit a connection a septic tank or waste water treatment system.

Reason: In the interest of clarity.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

Reason: In the interest of public health and to ensure a proper standard of development.

6. The developer shall reinstate the boundary along the laneway which shall be planted and permanently maintained with native hedgerow species. A vehicular entrance shall be provided along this boundary with adequate visibility in either direction along the laneway. Details for the boundary treatment and vehicular entrance shall be submitted to the planning authority for written agreement before works commence on the completion of the development proposed for retention.

Reason: In the interest of residential and visual amenity.

7. 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. 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 An Bord Pleanála to determine.

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.

Karla Mc Bride
Planning Inspector

04th October 2018