



An
Bord
Pleanála

Inspector's Report ABP-301932-18.

Development	Change of use of store to dwelling house.
Location	Banagher, Piltown, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority Reg. Ref.	17/566.
Applicant(s)	Lorraine Walsh.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Type of Appeal	Third Party.
Appellant(s)	Robert & Veronica Blackmore.
Observer(s)	Edward Blackmore.
Date of Site Inspection	30 th August, 2018.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located to the northern area of Piltown village to the south west of Co. Kilkenny. The site is located within the settlement boundary and the proposed access to the site, while off the regional road, the R698, it is within the 50kmph speed limit for Piltown.
- 1.2. The site, which comprises the existing building to be converted, is located adjacent to the existing house on the site, and to the rear of other houses fronting onto Tower Road and the R698. Current access to the building is via the applicants parents existing house and driveway.

2.0 Proposed Development

- 2.1. Permission is sought to change the use of the existing garage and store building to a dwelling.
- 2.2. The proposed development will result in the creation of a three bedroom house with study, kitchen/diner and living room over two floors. Access to the site will be via a newly constructed entrance onto the regional road. The proposed development seeks to alter the existing garage / store building through the inclusion of additional windows to accommodate the change of use. A new and separate access to the building is also proposed.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission for the proposed development subject to standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial planning reports raised concerns in terms of a number of issues and in particular the introduction of first floor windows and the potential impacts on existing residential amenities. A clarification request was required when the initial response sought to retain the windows as proposed. The final response provided roof lights in place for first floor windows and this was accepted by the Planning Authority.

The report noted the fact that the proposal relates to an existing building and the sub-division of a family plot. There was no objection in principle to the proposed development.

3.2.2. Other Technical Reports:

There are no written reports on the file submitted from Kilkenny County Council. The Planning Report notes verbal reports from Irish Water and the Area Engineer which required further information.

3.2.3. Third Party Submissions:

There are no third party submissions noted on the planning file received from Kilkenny County Council.

The Board will note that an application for Leave to Appeal was received on the 21st of May, 2018 from the current appellants. Leave to Appeal was granted on the 19th of June, 2018.

4.0 Planning History

PA ref 97/165: Permission granted for the construction of a domestic extension and garage as well as alterations to the existing house.

PA ref 99/1682: Permission refused for the retention of garage and store. One of the reasons for refusal related to the building size and its inappropriateness as a domestic garage.

PA ref 00/549: Permission granted for the indefinite retention of garage and store as constructed, subject to 3 conditions.

Adjacent sites:

PA ref 06/278: Permission refused for the demolition of a single storey dwelling and the construction of 6 dormer dwellings on a site approximately 150m to the south of the current appeal site. There were 6 reasons for refusal.

PA ref 18/377: Outline planning permission refused to Paula Walsh for the construction of a dormer dwelling, garage and all associated site works on a site to the north east of the current proposed site. This site was to be located to the rear of house which fronts onto Tower Road and the reasons for refusal were as follows:

1. The proposed development would lead to the creation of uncoordinated backland development contrary to the orderly and sustainable development of the area. The dormer type dwelling proposal is not in keeping with the existing established pattern of development in the area of single storey and would by reason of siting and design seriously detract from the residential amenities of the area, depreciate the value of adjacent properties and set an undesirable precedent for all other dwellings in the area. The proposed development is therefore contrary to the proper planning and development of the area and provisions of the Kilkenny County Development Plan 2014-2020.
2. The development will access a local primary road with a speed limit of 50km/h. The minimum visibility requirement at this location is 70 metres in both directions measured along the nearside road edge from a setback distance of 2.0m. All points along the nearside road edge shall be visible within this required distance. The proposed development would endanger public safety by reason of traffic hazard because required minimum sightlines have not been demonstrated in accordance with National Roads Authority – Design Manual for Roads and Bridges standards for this local county road and is therefore contrary to proper planning and sustainable development.

5.0 Policy Context

5.1. Development Plan

The site is located within the settlement boundaries of the village of Piltown and within a residential area. The Kilkenny County Development Plan, 2014-2020

supports the development of smaller towns and villages in a way that strengthens their role as local service centres whilst respecting their existing character.

The site is zoned Existing and General Development in the now expired Piltown Local Area Plan, 2011.

5.2. Natural Heritage Designations

The subject site is not located within any designated area. The closest Natura 2000 site is approximately 1km to the south of the site, being the Lower River Suir SAC, Site Code 002137.

6.0 The Appeal

This is a third party appeal against the decision of the Planning Authority to grant permission for the proposed change of use.

6.1. Grounds of Appeal

The issues raised in the appeal are summarised as follows:

- The development will result in overlooking of existing adjacent properties.
- The long narrow window proposed immediately under gutter level is directly facing appellants property and is higher than the level of the existing boundary hedge.
- The development would result in the loss of privacy and will have a serious affect on their property, privacy and amenity.
- Issues raised in relation to public notices.
- Planning history of the site indicates that the garage was constructed without planning permission.
- The development is infill and does not maintain the established building or roof line.
- All other houses in the area are single storey / bungalows.
- If permitted, the development would set an undesirable precedent.

- Issues raised in relation to the drawings submitted.

There are a number of enclosures with this third party appeal.

6.2. Applicant Response

The first party has responded to this third party appeal. The response is summarised as follows:

- Planning permission was granted for the retention of the garage under 00/549.
- The building was used in conjunction with the applicants fathers small contractors business. As he nears retirement, the business is now operated on a part-time basis without any employees.
- It is not accepted that there will be direct overlooking and the separation distance between the building and the appellants house is 40m.
- The long narrow window referred to is a high level window on the opposite side of the house to the appellants property.
- By reverting to the original layout and inserting the master bedroom window in the rear elevation, there would be no overlooking of the appellants property or any other dwelling or private garden space.
- In terms of the window in bedroom 2, it is proposed to use obscure glazing to the lower portion of the window.
- It is not considered that the development will de-value property and no evidence to support this claim has been submitted.
- The building is an existing building, therefore, the building line is not an issue.
- There are a number of 1½ storey houses in the vicinity.
- Referenced file no. 06/278 was not refused because it was infill.

It is requested that Rev 4 as submitted as part of the appeal be approved. An alternative, Rev 5 is also provided which would remove both bedroom windows from the roof plane facing the appellants.

6.3. Planning Authority Response

The Planning Authority has submitted 2 responses to the third party appeal as follows:

- Revised plan and elevation drawings of proposed development be submitted for agreement that mitigates against potential direct overlooking to adjacent residential properties in the area.
- The principle set of drawings, Rev 3 are acceptable to the PA provided that the roof window lights serving first floor master room and bedroom 2 are designed not to give rise to direct overlooking to appellants adjoining property and are fitted with obscure / part obscure glazing.
- Alternatively the internal floor plan at first floor level could be amended.
- Condition 2 of P17/566 should be complied with.

6.4. Observations

There is one observation noted from Mr. Edward Blackmore. The observation is summarised as follows:

- The overlooking of adjoining fields referred to in the first party response to the third party appeal are back gardens of four adjoining properties, and not agricultural fields as suggested.
- Concerns of incorrect elevations.
- The roof pitch is much steeper than any other surrounding properties.
- The inclusion of a window in the rear elevation as proposed would impinge on other properties and has been rejected by Kilkenny County Council.
- Issues with the site notice.
- The photos of 1½ storey houses are misleading as they are located across the road and within a different townland to the subject site.
- The replacement of the store with a high level residence set an undesirable precedent, noting the outline application for a dormer dwelling which was

submitted following the grant of permission. This OPP application was refused.

- The store as originally constructed without planning permission should never have been granted retention.
- The roof should be reduced and the ground floor can adequately accommodate a three bedroomed bungalow for the applicant, without affecting neighbours.

6.5. Further Responses

The third party appellants submitted a response to the first party response to the third party appeal as follows:

- Due to the proposed changes, a new application should be required.
- There will be overlooking of property.
- Issues in relation to roof lights and roof windows not addressed.
- 'Corrected' drawings provide for changes after permission was granted and were not on file when initially reviewed.
- It is disingenuous and misleading to suggest that a window on the rear elevation would only overlook fields.
- Using obscure glazing is inadequate as windows can be opened.
- The first party only addressed loss of privacy relating to the appellants daughters bedroom and not the private rear garden.
- It is not comparable to compare the proposed development with a housing scheme which requires 22m between properties.
- The appellants are not against the applicant living in the building, but are vehemently opposed to dormer / one and a half storey buildings in the area and propose that no windows are permitted at first floor level of the proposed dwelling.

- A proposal to live on the ground floor with a suitable extension to satisfy space requirements and to reduce the roof height could have been put forward.

7.0 Assessment

7.1. Having regard to the location of the subject site on zoned lands, within an established village, and within a strong residential area of Piltown, I consider that the principle of the proposed change of use of the garage/store to a dwelling can be considered acceptable. I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Planning History
2. Residential amenity
3. Other Issues
4. Appropriate Assessment
5. Environmental Impact Assessment

7.2. Planning History

7.2.1. The Board will note the planning history pertaining to the subject site and the third party objections to the proposed development. In terms of the height and design of the subject building, I note that, notwithstanding the fact that it was constructed without the benefit of planning permission, retention was permitted for it in 2000. The building has been a part of the landscape in this area of Piltown for a significant number of years and in this regard, I do not propose to consider the requests to have the ridge height lowered at this stage.

7.3. Residential Amenity

7.3.1. Having concluded that the principle of the development is acceptable, I consider the issue of residential amenity to be pertinent. In terms of the residential amenity of future occupants, I would consider that the proposal is acceptable. The development proposes a three bedroomed house over two floors. The site layout

provides for adequate private open space and parking. I am satisfied that the development is acceptable in this regard.

7.3.2. The primary objections from third parties to the proposed development is the proposed inclusion of first floor windows to the rear and roof lights. It is submitted that the development will result in overlooking of existing properties and would significantly impact on the existing residential amenities of these adjacent properties. The Board will note that there were a number of amendments made to the first floor layout in an effort to address issues raised.

7.3.3. The existing building is located approximately 40m from the rear of the appellants house to the north west and it is proposed that roof lights will be installed to provide light to the first floor bedrooms and landing. The third parties object to any windows at roof level concluding that any such windows would significantly impact on their privacy by reason of overlooking. I would not have such concerns and note that the roof windows are proposed to be included to service bedrooms, en-suite and walk in wardrobe. The Board will note that a number of proposed first floor layouts were provided in order to minimise the potential impacts on the adjoining properties. In this regard, and should the Board be minded to grant permission in this instance, I recommend that the following conditions should be included:

- The existing first floor window in the front / north elevation shall be retained in terms of its current size and scale.
- No permission is granted for a first floor window in the rear / southern gable elevation.
- The first floor layout as presented as Rev 5 is hereby permitted except for proposed bedroom 2. In this regard, wardrobe and the main bedroom area will be reversed and the roof light to service proposed bedroom 2 shall be included on the eastern roof plane, with a small rooflight for the wardrobe to be included on the western roof plane.

7.4. Other Issues

7.4.1. The Board will note the intention to provide a new and independent access to the subject site. I am satisfied that the proposed location is acceptable and will provide for adequate sight distances in both directions.

7.4.2. The development is to connect to the public water services in the area. I note that there is no letter advising agreement from Irish Water in relation to connections. Should the Board be minded to grant permission in this instance, a condition requiring such agreement prior to the commencement of any development on site should be requested. I have no objections in this regard.

7.4.3. Issues raised in relation to the public notices are noted.

7.5. Appropriate Assessment

Having regard to the location of the subject site within an established and built up area, together with the nature and scale of the proposed development, I am satisfied that there is no potential for impact on any Natura 2000 site, warranting AA.

7.6. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

8.1. It is recommended that permission be granted for the proposed development subject to conditions.

9.0 Reasons & Considerations

Having regard to the provisions of the current Kilkenny County Development Plan, 2014-2020, the pattern of existing and permitted development in the vicinity and area and having regard to the information submitted as part of the planning application, together with the information submitted in the appeal, I am satisfied that the proposed development, subject to compliance with conditions, consisting of the change of use of an existing garage/store to a dwelling, generally accords with the policy requirements of the plan. It is further considered that the design and scale of the proposed development would not seriously injure the existing residential

amenities or general character of the area and 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 plans and particulars submitted to the Planning Authority on the 13th day of February, 2018 and 19th day of April, 2018 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The existing first floor window in the front / north elevation shall be retained in terms of its current size and scale.
 - (b) No permission is granted for a first floor window in the rear / southern gable elevation.
 - (c) The first floor layout as presented as Rev 5 is hereby permitted except for proposed bedroom 2. In this regard, the wardrobe and the main bedroom area will be reversed and the roof light to service proposed bedroom 2 shall be included on the eastern roof plane, with a small rooflight for the wardrobe to be included on the western roof plane.
 - (d) Full details of finishes, including windows and doors, shall be submitted for the written agreement of the Planning Authority.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

3. Prior to the commencement of any development on site, details of an agreement with Irish Water for connections to public services in the area shall be submitted to the Planning Authority.

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

4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, shall be erected on the site/within the rear garden area, without a prior grant of planning permission.

Reason: In the interest of the amenities of the area.

5. (a) A scheme indicating boundary treatments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any planting shall be carried out in accordance with the agreed scheme and shall be completed within the first planting season following the commencement of construction works.

(b) 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 order to screen the development, in the interest of visual amenity.

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.

A. Considine

Planning Inspector

21st September, 2018