



An
Bord
Pleanála

Inspector's Report ABP-302220-18

Development

Retention of (1) three storey split-level domestic garage (2) 3 no. outbuildings (3) amendments and alterations to site layout (previous application reference number 07/2442) and PERMISSION is sought to complete three storey split level domestic garage and all ancillary site works

Location

Knockatemple, Virginia, Co. Cavan

Planning Authority

Cavan County Council

Planning Authority Reg. Ref.

18216

Applicant(s)

Jack Meehan

Type of Application

Retention and permission

Planning Authority Decision

Split Decision (Grant and Refuse)

Type of Appeal

First Party

Appellant(s)

Jack Meehan

Observer(s)

Tony and Freda Farrelly

Date of Site Inspection

14th November 2018

Inspector

Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.61 ha, is located in the townland of Knockatemple, c. 3.4km south of Virginia, Co. Cavan. The appeal site is located on the western side of the L7118 local road, in a rural area which has a dense concentration of one-off rural housing. Lough Ramor is located c. 1.5km to the north of the appeal site.
- 1.2. The appeal site is occupied by a detached dormer dwelling house with its front elevation facing east, towards the local road from which the site is accessed. Three outbuildings are located along the western boundary of the site, to the rear of the house, and a three storey detached structure is located to the north of the house. A large proportion of the appeal site also has a gravelled hardstanding finish.
- 1.3. The appeal site is elevated, with ground levels falling to the north and south. As a result of this topography there is a significant drop in level across the site from south to north, with a retaining wall structure adjacent to the three storey structure referred to above. A second vehicular access driveway serves the lower area to the north of the site.
- 1.4. The appeal site is located close to the junction of the L7118 and the L3022 local road which runs in a perpendicular direction. The dwellings immediately to the north of the appeal site face northwards to address the L3022, with their rear gardens backing onto the appeal site.

2.0 Proposed Development

- 2.1. The development consists of:
 - Retention of:
 - Three storey split-level domestic garage (stated GFA of 176 sq m).
 - 3 No. outbuildings (stated 160 sq m total GFA).
 - Amendments and alterations to site layout (previous permission Reg. Ref. 07/2442).
 - Permission to complete three storey split-level domestic garage and all ancillary site works.

- 2.1.1. A letter, signed by the applicant, was submitted with the planning application stating that he undertakes never to use the upper storeys of the garage building for anything other than storage and that he would comply with Condition 4 of permission Reg. Ref. 07/2442.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Cavan County Council decided to issue a split decision. They decided to grant permission for the retention of the 3 No. outbuildings and amendments and alterations to the site layout, and to refuse permission for the retention and completion of the garage for the following reason:

- Having regard to the scale, height, design and nature of the three storey split-level garage, the proximity of residential dwellings, the scale of the existing house on site and to the number of outbuildings currently on site, it is considered that the development represents non-ancillary and non-subservient development associated with the main dwelling on site, represents piecemeal, haphazard, disorderly development, represents an excessive level of development of this kind on site and would seriously injure the visual amenities of the area and residential amenities of adjoining property. It is considered that the development would materially contravene Objective DMO9 of the Cavan County Development Plan 2014-2020, would set an undesirable precedent for developments of this nature and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

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

- Applicant is operating a business from his dwelling in the form of a tack shop granted as part of Reg. Ref. 07/193.
- Permission was granted for a domestic garage in 2008 in the same location. This expired in 2018 and was not acted upon and policy regarding domestic garages has changed since 2008.

- The garage resembles an additional dwelling on the site and thus is non-ancillary and non-subservient to the main dwelling.
- It contravenes Objective DMO9 as it is not single storey, is not domestic in appearance and is not in character with the existing dwelling.
- Planner has no major issue with the retention of the outbuildings for domestic purposes only.
- There are two bungalows adjoining the site to the north and the windows serving the north elevation of the garage will directly look into these properties. The development would seriously injure residential amenities in terms of overlooking and loss of privacy.
- It is considered that appropriate assessment is not required for the development.

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. One third party observation was submitted by Tony and Freda Farrelly. The issues raised can be summarised as follows:

- Loss of privacy and overlooking.
- Purpose of three storey garage with balcony and basement is questionable and a cause for concern.
- Why does a domestic garage require French doors and a toilet at first floor level?
- Existing screening on observers' property was designed to offer some privacy between the neighbouring gardens, however this is rendered null and void due to the height of the garage.

- Observers' human rights are being undermined and denied by the applicant.

4.0 Planning History

- 4.1. **Reg. Ref. 07/2442:** Permission granted to erect domestic garage with storage overhead, connecting to existing site services and all ancillary site works.
 - 4.1.1. Condition No. 4 states that the garage shall be used for domestic and private purposes only and no commercial or business trade shall be carried out without prior approval of the Planning Authority.
- 4.2. **Reg. Ref. 07/193:** Permission granted to convert existing first floor of dormer dwelling to equine products (tack) shop, to allow for new external stairs to side of dwelling, to add additional parking and all ancillary site works.
- 4.3. **Reg. Ref. 00/1150:** Permission granted to retain alterations to house type previously granted under Reg. Ref. 99/470.
- 4.4. **Reg. Ref. 99/470:** Permission granted to change existing house plan to provide a dormer dwelling on site No. 1 (previous Reg. Ref. 98/35).
- 4.5. **Reg. Ref. 98/35:** Permission granted to erect 2 No. fully serviced dwellings, garages and entrances.

5.0 Policy Context

- 5.1. **Cavan County Development Plan 2014-2020**
 - 5.1.1. The appeal site is located on unzoned lands in a rural area that is outside the development envelope of any town or village.
 - 5.1.2. Lough Ramor is designated as one of nine Major Lakes and Environs in the County and the following Objectives are noted:
 - **NHEO33:** To maintain the amenity value of major lakes and their environs within a landscape, recreational and ecological context by restricting and regulating development that would prejudice use and enjoyment of the areas, give rise to adverse visual impacts or threaten habitats through disposal of effluents.

- **NHEO34:** To implement the above along the shorelines of these lakes and the immediate area adjoining, including skyline development on surrounding hill crests.

5.1.3. Section 10.14.3 relates to design and siting considerations and states, inter alia, that “it is essential that similar care is exercised in the siting and design of new buildings to ensure that they too can integrate harmoniously with their surroundings and thereby protect the amenity and character of the countryside of County Cavan. The Council has prepared design guidelines for rural houses and it is the policy of the Council to implement these guidelines through the development management process”.

5.1.4. Section 10.14.4 relates to extensions to dwellings and states that “the County Council recognises the importance of maintaining use of existing dwellings in rural location and this along with changing families and lifestyles may necessitate extensions to dwellings. It is essential that such extensions do not interfere with the existing character of the dwelling or by its size and design render a dwelling out of character with its rural setting, extensions should;

- Be designed so as to relate to the character of the existing dwelling.
- Be constructed with similar finishes, where appropriate and with similar windows to the existing building so that they will integrate with it.
- Have a pitched roof, particularly when visible from the public road.
- Not obscure the main features of the existing roof, i.e. should not break the ridge or eave lines of the roof.”

5.1.5. The following Objectives are noted:

- **DMO8:** To require all applications for rural houses to comply with the ‘Design Guide for Single One-off Rural Houses within Cavan Rural Countryside.’
- **DMO9:** One detached domestic garage only shall be permitted for any single dwelling. Domestic garages shall be single storey, domestic in appearance and in character with the domestic dwelling. Carports are not permitted in rural locations.

- **DMO10:** Extensions to dwellings which are considered to interfere with the character of the dwelling or overwhelm it by virtue of their size and design shall not be permitted in rural locations.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is not located within or in the immediate vicinity of any sites with a natural heritage designation. The closest Natura 2000 sites are the River Boyne and River Blackwater SPA and SAC (Site Codes 004232 and 002299, respectively), which are c. 3.5km to the south east. Lough Ramor, which is c. 1.5km to the north of the appeal site is a pNHA.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first party appeal was submitted by Michael Hetheron Arch. & Eng. Services Ltd. on behalf of Jack Meehan. The issues raised can be summarised as follows:
- Intervention by the Planning Authority caused a delay in the completion of the building before its permission expired.
 - The situation should be resolved by granting an extension of time and overturning the refusal.
 - Design, levels, height, window openings and dimensions are in character with existing dwelling.
 - Planning Objectives DMO9, DMO9 and DMO10 are retrospective.
 - The development area has a drop off of 3m south to north with a foundation dig to this depth. Rather than waste this space it was decided to put it to good use. The north wall of the basement acts as a retaining wall.
 - The basement does not affect the privacy of any adjacent properties and goes virtually unnoticed from the road.
 - A single storey garage with storage overhead and part concealed basement is a more accurate description of the development.

- Issues raised by observers should have been submitted during application Reg. Ref. 07/2442, not when the structure has been completed to roof level.
- Privacy of observers has been greatly enhanced and views of his property diminished.
- Top storey window is a toilet window so obscure glass could be used. Appellant also offers to block up window.
- Permission Reg. Ref. 07/193 was never implemented. Tack shop was operated out of existing dwelling, but it has gone out of business.
- There is no paddock on the site but a wild flower meadow.
- Total square metreage above ground level is 28 sq m less than originally granted.
- An extension of permission was granted for the development.
- New building is ancillary and subservient to main dwelling.
- Appellant has signed a declaration that the building will not be used for habitation.
- Basement gives building a more positive and aesthetical pleasing façade.
- 48 sq m of shed 1 is temporary and will be dismantled. This building is not piecemeal, haphazard or disorderly. Shed 2 is also temporary. Sheds are unobtrusive and not generally visible from adjoining property.
- Site is 1.5 acres, and the ratio of the size of development to the size of the site is relevant.
- Observers have recently built a large shed close to appellant's boundary.
- Garage is 25m from the boundary at its closest point.
- Timeline of enforcement and planning engagement set out.
- For retention of the basement the appellant is willing to block up north facing gable windows, adjust the size of any other openings deemed necessary and forego the balcony to the front.

6.1.2. A number of annotated photographs were submitted with the appeal as well as a copy of the site layout plan with distances to neighbouring properties indicated.

6.2. **Planning Authority Response**

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

- While the appellant states that a more accurate description of the development is a single storey garage with storage overhead and part concealed basement underneath, the application clearly stated that the structure is three storey and this is clear when one visits the site.
- The building on-site has not been built in accordance with what was approved under planning reference 07/2442. The building on site is larger and higher and therefore permission 07/2442 was never acted upon.
- Planning Authority is seriously concerned with the scale, height, design and nature of the structure. It is not ancillary or subservient to the main dwelling, would set an undesirable precedent, seriously injure the visual amenities of the area and residential amenities.
- The Board is asked to refuse permission for the three storey garage.

6.3. **Observations**

6.3.1. A third party observation was submitted by John Spain & Associates on behalf of Tony and Freda Farrelly. The issues raised can be summarised as follows:

- The observers' family home is located to the north of the appeal site.
- Three storey structure resembles a three storey house rather than a domestic garage.
- Condition 2 of permission Reg. Ref. 00/1150 required a natural screen along the boundary with the observers' property. This was never erected and the observers subsequently introduced a hedge within their property.
- The structure which has been partially constructed differs materially from the previously permitted development to such a degree that the structure cannot

be considered as an implementation of that permission but is in effect a fundamentally different development.

- The previous permission for a garage has expired and is not relevant.
- The policies of the current County Development Plan apply to this application and the development directly conflicts with the stated policies of the Development Plan.
- The appeal's reference to a single storey garage with storage overhead and part concealed basement is not accepted. The lowest level is ground floor level, not a basement. It has a carport, doorway and windows.
- Observation is valid, as structure is not what was previously permitted.
- Overlooking and visual intrusion. Views to the rear are dominated by the first and second storeys of the structure.
- Omission of balcony and second floor window would be insufficient to remedy the severely injurious nature of the development.
- The three sheds to be retained are crudely constructed and symptomatic of the piecemeal development of the site.
- The observers' shed referred to in the appeal was erected 18 years ago. The panel fence referred to was erected 1 month ago.
- Appeal states that the top storey window facing north towards the observers' property is a toilet window with obscure glass. This is not reflected in the floor plans.
- Development directly conflicts with Objective DMO9.
- Objective DMO10 is not directly applicable, but the domestic garage is neither ancillary nor subservient to the existing dwelling.
- The floor area of the structure is in excess of the minimum standard for a four-bedroom seven person house.
- Significant overlooking and loss of privacy due to height and sloping topography.

- Any attempt to screen the development would have significant visual, sunlight and daylight implications.
- Visual impact of structure. It is visually incongruous and detracts from the visual amenity of the area.
- Detrimental impact on property value.
- Proposal conflicts with Cavan Rural Dwelling Design Guide.
- Drawing accuracy is questioned.
- Previous failures to satisfactorily complete development constitutes a valid reason for refusal which excludes compensation.
- Decision of the Planning Authority to refuse permission should be upheld.

6.3.2. The observers included a number of photographs with their observation.

6.4. **Further Responses**

6.4.1. None.

7.0 **Assessment**

7.1. Having reviewed the documentation associated with the planning application and appeal and having inspected the site, I consider that the key planning issues arising are as follows:

- Layout and design.
- Residential amenity.
- Appropriate Assessment.
- Environmental Impact Assessment.

7.2. **Layout and Design**

7.2.1. Retention permission is sought for 3 No. sheds of various sizes, the three storey garage and alterations to the site layout previously permitted under Reg. Ref. 07/2442. Planning permission is also sought for completion of the garage. The

Planning Authority decided to grant retention permission for the 3 No. sheds and the alterations to the site layout, but to refuse permission for the retention and completion of the garage.

- 7.2.2. With regard to the 3 No. sheds, I note that they are located to the rear (west) of the site, behind the existing dwelling and I do not consider that they are excessively sized or scaled with regard to the site context. The tallest shed is shed 2, which has a ridge height of 3.3m. Shed 1 is the largest structure and comprises a blockwork structure and shipping container with a roofed external area between these two elements. This shed is sunken into the south western corner of the appeal site. The appellant has stated that the shipping container and external roof area of shed 1 are temporary and will be removed. He also states that shed 2 is temporary. I consider the three sheds to be generally acceptable, as they are not visually obtrusive, do not impact on residential amenities and are suitably subservient and ancillary to the main dwelling. I do, however, consider that the design and layout and shed 1 is haphazard, disorderly and out of character with the rural area. I therefore recommend that a condition be included, requiring the removal of the shipping container and external roofed area of shed 1 within a specified time period, should the Board be minded to grant permission.
- 7.2.3. With regard to the structure that is indicated to be a domestic garage, having inspected the site, I would concur with the Planning Authority and the observers that this structure is best understood as a three storey building and I note that it was described as such in the statutory notices. I note in this regard that a vehicular access door, pedestrian door and four windows are located at this lowest level and I therefore consider that it represents ground floor level, rather than a basement level.
- 7.2.4. With regard to the drawings associated with the now expired permission Reg. Ref. 07/2442, it would appear that the intention was to construct the garage at a similar level to the existing dwelling. The drawings submitted with that application do not make clear how the significant level change across the site was to be addressed, however it is likely that some form of retaining structure would have been required around the garage structure, unless there has been a significant change to ground levels across the site in the interim.

- 7.2.5. Given that the appellant has stated that the commercial element (i.e. tack shop) has ceased trading, and that retention permission is sought for three outbuildings with a total GFA of 160 sq m, it is not clear why an additional three storey structure with a GFA of 176 sq m, including storage areas and a balcony is required.
- 7.2.6. Objective DMO9 of the Development Plan states that one detached domestic garage only shall be permitted for any single dwelling and that domestic garages shall be single storey, domestic in appearance and in character with the domestic dwelling. It also states that carports are not permitted in rural locations.
- 7.2.7. The appellant contends that the provisions of the Cavan County Development Plan 2014-2020 cannot be applied retrospectively to the garage structure, however I note that the appellant has sought permission to retain and complete the garage structure and I therefore consider that it is the Development Plan that is in force at the time of the Board's decision that is applicable.
- 7.2.8. In this instance the garage for which permission is sought to retain and complete is three storeys in height, considered from the lower ground level, or two storeys considered from the higher ground level adjacent to the dwellinghouse, In either case it is contrary to Objective DMO9. I also consider that as a result of its three storey height and position relative to the existing house and the extensive hardstanding area around it and separate driveway access, it is of a scale that I consider to be non-subservient and excessive relative to the existing dwellinghouse, injurious to the visual amenities of the area and out of character with the pattern of development in the area.

7.3. Residential Amenity

- 7.3.1. The observers contend that the garage results in overlooking and loss of privacy. While the garage structure is visible from the observers' property, having regard to the minimum c. 38m separation distance between the two structures, I do not consider that an unacceptable level of overlooking or loss of privacy arises, given the relatively densely developed nature of ribbon development in the area. Neither do I consider that there is any significant potential for overshadowing or loss of sunlight/daylight arising from the development. I therefore do not recommend that

permission be refused for the garage on the basis of its impact on residential amenity.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the proposed development, which relates to retention of sheds and retention and completion of a garage adjacent to an existing dwelling on a site which is not within or immediately adjacent to 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.

7.5. Environmental Impact Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive locations, 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. I recommend that planning permission should be REFUSED for the retention and completion of the three storey split-level domestic garage for the reasons marked (1) below and GRANTED, subject to conditions, for the retention of 3 No. outbuildings and amendments and alterations to the site layout for the reasons and considerations marked (2), as set out below.

9.0 Reasons (1)

1. Having regard to: the scale, height, and three storey design of the domestic garage; the topography of the site and surrounding area; the extensive hardstanding and additional driveway area adjacent to the garage; and the number of outbuildings currently on site; it is considered that the development represents an excessive level of development of this kind on site, would

seriously injure the visual amenities of the area, would be out of character with the pattern of development in the area, and would be contrary to Objective DMO9 of the Cavan County Development Plan 2014-2020. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

10.0 Reasons and Considerations (2)

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

11.0 Conditions

1. The development shall be retained, 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.

Reason: In the interest of clarity.

2. The shipping container and roofed external area adjacent to the outbuilding referred to as Shed 1 on drawing number 02_A1, as submitted with the planning application, shall be removed within three months of the date of this Order, and the resultant area reinstated.

Reason: In the interests of orderly development and visual and residential amenity.

3. The three outbuildings referred to as Sheds 1, 2 and 3 on drawing number 02_A1, as submitted with the planning application, 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. 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.

Niall Haverty
Planning Inspector

29th November 2018