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Bord  
Pleanála

## Inspector's Report ABP.302527-18

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<b>Development</b>	Retention of existing domestic garage and gated pedestrian access which serves neighbouring dwelling.
<b>Location</b>	No 38 Watervale, Roosky. Carrick on Shannon. Co Roscommon.
<b>Planning Authority</b>	Roscommon Co. Council.
<b>Planning Authority Reg. Ref.</b>	PD 18/306
<b>Applicant(s)</b>	Seamus Hamill
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	To Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Seamus Hamill
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> , October 2018
<b>Inspector</b>	Breda Gannon
<b>Appendix 1</b>	Site Plan Photographs

## 1.0 Site Location and Description

- 1.1. The site is located at No 38 Watervale, Roosky. Co Roscommon. It is located at the end of a cul-de sac with a landscaped area and communal parking area to the front. The site accommodates an end of terrace two-storey house with a two-storey garage to the side. There is a narrow passageway running along the side of the garage that extends along the rear of the house and provides access to the rear of the adjoining house. A number of structures have been constructed to the side of the house including a wooden balcony to the front of the garage.
- 1.2. Watervale is a housing development comprising a mix of detached, semi-detached and two storey terraced housing. It is located on the west side of Roosky and access is via the R371 regional road.

## 2.0 Proposed Development

- 2.1. The proposal seeks the retention of a domestic garage and a pedestrian access that serves neighbouring dwelling. The garage is two-storey in scale and has a stated floor area of 34m<sup>2</sup>. It is positioned at the side (north-west) of the house and is recessed behind the front building line. It is finished externally to match the existing dwelling.
- 2.2. The pedestrian access to be retained extends along the side of the garage (north-west) and to the rear of the house, providing access to the rear of the adjoining property at No 37.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to refuse permission for the retention of the development on the grounds that it is partially located on lands which formed part of the public open space associated with the Watervale housing development (PD/01/878) and therefore materially contravenes the permission and associated conditions.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

3.2.2. The Assistant Planner's report of 9/8/18 notes that the garage has been constructed on lands that were initially laid out as open space. It is considered that the space provided in this location would be incidental and not considered as usable open space for any of the dwellings in the development. Taking this into consideration, it is not considered that the construction of a domestic garage would reduce the residential amenity of the other dwellings due to the reduction in open space. The lands are now in the ownership of the applicant.

3.2.3. The construction of the garage has interfered with the ability of the adjoining dwelling to access the rear of the property. The garage has been constructed in the location of the pedestrian access as permitted under the parent permission 01/878. This has resulted in the provision of a gated pedestrian access along the western and southern boundary of the site, for which retention is being sought. Whilst the access is narrow, it does provide access to the rear of No 37. It is concluded that the proposal is consistent with the proper planning and sustainable development of the area and that retention of the development should be permitted.

The Senior Planner's Addendum Report of 16/8/18 notes that it is necessary in determining the current application to have regard to the recent planning history on the site and the issues raised. It was highlighted in planning Reg Ref No PD/17/403 that the site included lands which formed part of the communal open space serving the Watervale development, approved under PD/01/878. The change of use of those lands, on which a domestic garage has been constructed, together with boundaries of extended garden area, contravened the provisions of the permission. The domestic garage and pedestrian access serving the neighbouring house, for which permission for retention is sought under the current application are sited on lands on which there has been an unauthorised change of use.

The current application fails to address the fundamental issue which resulted in the previous refusal, with the current application seeking only to retain the domestic garage and the amended pedestrian access to neighbouring property. It is noted that the applicant is the legal owner of the land in question, but this does not confer an authorised planning status on the land. It is inappropriate to grant retention

permission for elements of development which occur on lands which have been subject to an unauthorised change of use. To do so would inappropriately condone the contravention of planning consents, would remove the rights of third parties to legitimately make comment on changes which have occurred from the originally permitted development and would create a precedent for the erosion of areas of communal open space. It is concluded that permission for the retention of the development should be refused.

#### 3.2.4. Other Technical Reports

None received.

#### 3.3. **Prescribed Bodies**

None received.

#### 3.4. **Third Party Observations**

None received.

### 4.0 **Planning History**

**01/878** – Planning permission granted for 35 residential units on the overall site.

**17/403** – Planning permission refused for the retention of an existing study/office at second floor level of existing house and stairwell servicing same and for the retention of an existing domestic garage on the site for similar reasons to those cited in the current application.

### 5.0 **Policy Context**

#### 5.1. **Development Plan**

The operative development plan is the **Roscommon County Development Plan 2014-2020**. The site is located in the village of Roosky, identified as a Tier 4 settlement under the Core Strategy.

## 5.2. **Natural Heritage Designations**

Lough Boderg and Lough Bofin NHA ( Site Code 001642) is located to the west of the site. Clooneen Bog SAC (Site Code : 002348) is located c 3km south-east of Roosky.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The grounds of appeal may be summarised as follows;

- The applicant is the registered owner of the dwelling and the lands on which the garage is built (Appendix B).
- The garage is located entirely within the applicant's landholding.
- The existing pedestrian access to the side and rear of the applicants dwelling house and which serves the adjoining dwelling house is not affected by this development as there is an existing right of way in place (coloured yellow on Appendix C).
- The applicant purchased the lands because the portion of land was too small to be used as a substantial supervised green open space and due to its location at the end of a cul-de-sac it had become an area of antisocial behaviour.
- The total amount of supervised open space that serves the estate far exceeds the minimum requirement set out in the development plan that was in place at the time the permission was granted.

### 6.2. **Planning Authority Response**

No further response received.

### 6.3. **Observations**

None received.

## 7.0 Assessment

- 7.1. I note from the details on the file that under the provisions of the parent permission governing the overall development of this estate, a small green area was retained between the side boundary of No 38 and the overall site boundary. Within the area and proximate to the boundary of appellants property, provision was also made for pedestrian access to the rear of the adjacent house in the terrace. The appellant subsequently bought the land and constructed a garage thereon. Pedestrian access to the rear of the adjacent property was reinstated, albeit further to the north-west.
- 7.2. I have no objection to the retention of the garage, provided its use is controlled for use ancillary to the dwelling. Its location and external finishes which match those of the existing house, results in a low key development with no potential for negative impacts on the visual or residential amenities of the area.
- 7.3. The pedestrian access serves its intended purpose in that it provides access to the rear of the adjoining property. It is a benign form of development with no potential to negatively impact on the residential and visual amenities of the area. I have no objection to its retention.
- 7.4. The planning authority's concerns regarding the development relates primarily to its encroachment onto an area designated as open space in the parent permission. The location of the space, its size and configuration limited is potential as a usable amenity area. Having regard to the quantum of quality open space available to the overall development, I do not consider that the loss of this area unduly prejudices the amenities of local residents.
- 7.5. It would appear from the documentation submitted in support of the application and the appeal that the access is located outside the lands in applicant's ownership. There is no evidence that the right-of-way is entered as a burden on the title documents. This raises questions regarding the ability of the applicant to apply for planning permission for its retention.
- 7.6. The Board has no mandate in relation to legal title. Should the Board be minded to grant permission for the retention of the development, I recommend that it relies on

the provisions of section 34(13) of the Planning and Development Act, 2000, which states that *'a person shall not be entitled solely by reason of a permission under this section to carry out any development'*.

## **8.0 Appropriate Assessment**

8.1. The closest designated site is Clooneen Bog SAC ( Site Code : 002348) which is located c 3km south-east of Roosky. Having regard to the location of the development within a serviced built up area, the nature of the development to be retained and the separation distance from the Natura 2000 site, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effects on Cloneen Bog SAC or any other European site, in view of the sites' conservation objectives and that, therefore, a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not required.

## **9.0 EIA Screening**

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

## **10.0 Recommendation**

10.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the retention of the development for the reasons and considerations set out below.

## 11.0 Reasons and Considerations

Having regard to the nature, location, design and scale of the development proposed to be retained, it is considered that subject to the conditions set out below, the retention of the domestic garage and pedestrian access route would not be out of character with the existing pattern of development in the area and would not detract from the visual or residential amenities of the area. The development would not, therefore, be contrary to the proper planning and sustainable development of the area.

## 12.0 Conditions

- 1 The garage shall be used for private domestic purposes only incidental to the enjoyment of the dwelling. The garage shall not be used for human habitation or for commercial/industrial purposes

**Reason:** In the interests of residential amenity.

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Breda Gannon  
Senior Planning Inspector

31<sup>st</sup> October 2018.