



An
Bord
Pleanála

Inspector's Report ABP-302713-18

Development	Garage and car port attached to the site of previously approved dwelling house (Reg. Ref. AA170090) and all associated site works.
Location	Fleenstown Great, The Ward, Ashbourne, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	AA171428
Applicant(s)	Adam Tormey
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Noel & Vivienne Browning
Observer(s)	None
Date of Site Inspection	25 November 2018
Inspector	Una Crosse

1.0 Site Location and Description

1.1. The site is located in Fleenstown approximately 3.5km south of Ashbourne on a local road addressed by a large number of single one-off dwellings. The site accommodates an existing dwellinghouse.

2.0 Proposed Development

2.1. The proposal comprises the construction of a car port and garage attached to a previously approved house. The proposal has an area of 76 sq.m and is single storey with a pitched roof and double fronted.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission for the proposed development subject to 9 conditions including that the structure not be used for human habitation, external finishes to comply with information received on 27 July 2018 and construction working hours.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first report outlines policy provisions, submissions and the key planning issues which are considered to be AA, planning policy and design and layout.

- Precedent has been set for domestic set on the site;
- Letter of consent from applicant's brother who is landowner.
- Noted site location map and site layout plan do not correspond in terms of red line boundary requiring clarification with a third party making a submission in respect of a strip of land to the east of the site;
- Disparity in ridge height of permitted and house shown in drawings with revised plans required showing permitted dwelling on the site;

- Design of garage and car port is acceptable;
- Noted – response to FI was deemed to be significant and was re-advertised.

Further Information was requested in respect of:

- Ownership details/folio;
- Site location and layout plans to show identical red line boundary;
- Revised plans and elevations of the permitted dwelling;

Report in Response to Further Information notes:

- Applicant has submitted letter from solicitor stating Leon Tormey is site owner and noted that third party response references dispute in ownership along eastern boundary which is considered a civil matter.
- Revised layout plan submitted with roadside boundary set back by 3m and letter of consent from landowner to the east with Transportation Section satisfied with the Response.
- Revised location and layout plan show red line identical on both.
- Plans show dwelling as previously permitted with error noted on previous drawing.
- Proposal considered acceptable in context of County Plan subject to conditions.

3.3. **Prescribed Bodies**

No responses requested.

3.4. **Third Party Observations**

One received as per the grounds of appeal below.

4.0 **Planning History**

4.1. **On Site**

Ref. AA/160967 – outline permission for a dwellinghouse, wastewater treatment system and new entrance.

Ref. AA170090 – permission consequent granted.

5.0 Policy Context

5.1. Meath County Development Plan 2013-2019

Section 10.7 includes design criteria for residential development in rural areas including ancillary structures.

5.2. Natural Heritage Designations

None in vicinity of site.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are outlined in an extensive 20 page statement of appeal grounds with over 40 pages of appendices which I have summarised as follows:

- Incorrect details regarding landownership of the full application site which questions validity of the application;
- Appellant purchased their site in 1998 with physical boundary of the site consisting of well-established hedge with part of land within proposed site boundary falling beyond this physical boundary;
- Hedge was planted along line of the fence that enclosed the portion of the land that had been sold separately to the acreage purchased by appellants with fence line from 1998 still present in the hedge;
- Fence/hedge runs parallel with power lines supported by utility poles (photos attached);
- Site plan outlined shows serious discrepancy of c.7m between two boundaries with applicant encroaching on lands in the control of appellant in their application;
- Removal of hedge would have serious consequences for the appellant including right to graze their animals, shelter and privacy and runs counter to issue of

grounds of appeal that appellant controls part of the land where proposal is located;

- Drawing relating to sightlines show encroachment on lands in control of appellants including removal of hedge which is in ownership of appellants and in order for applicant to comply with condition necessary for front hedge to be set back but it is property of appellant with no consent sought or granted which is contrary to further information response by applicant and Applicant is at odds with complying with condition attached to house consent;
- Reference made to boundary survey (May 2017) which recommends both parties reach agreement and accept existing physical boundary and transfer parts of the folios as per prepared Map G;
- Previous applications by Leon Tormey (refused) show planning boundary as per physical boundary of the site marked by the fence and hedge with applicant approaching appellant following refusals with an offer to purchase lands indicating an acknowledgment of Browning's ownership rights;
- Boundary of current application has been amended from previous site location maps showing serious inconsistencies with excerpts from Land Registry showing Folio 618F in ownership of Vivienne and Noel Browning and Folio 19448F in ownership of Leon Tormey;
- Land registry map produced by applicant at further information not conclusive and is not fully convincing evidence of landownership which remains an unresolved issue;
- Appellants land registered in 2001 with Leon Tormey landownership registered in 2015 and electronic database of land registry may have been established after appellants registration and prior to Tormey registration with errors of registered boundaries possible causing discrepancies creating serious uncertainties and providing Tormey land registry map is not fully reliable;
- Concern at significant time difference between both land registrations in addition to lack of a proper boundary survey highlighting need for a proper assessment of the boundary between the two lands;

- Note that registration of the land was a long time after the planting of the hedge as outlined in the response to further information highlighting serious discrepancies in regard to land ownership and application should be deemed invalid;
- Site plan is inaccurate with reference to the presence of a building located on the application site with recent photographs showing a shed with a canopy in the SW corner of the site and state that same does not appear in the current application;

6.2. Applicant Response

The Applicants response to the appeal is summarised as follows:

- Principle of domestic use on the site established and permission now sought for a modest garage and car park ancillary adjunct to the dwelling;
- Applicants understanding of the property ownership to date is outlined such that upon consulting their folio map they discovered their ownership extended beyond the hedge to the east;
- Initial planning report states design of garage and car port is acceptable but noted objection from adjoining owner which was subject of further information request whereupon applicant's agent submitted.
- Planning report in response to FI notes that folio map responds to site location map submitted with letter of consent from owner for applicant to make application;
- Dispute over eastern boundary is considered a civil matter;
- Note appellant claiming ownership by adverse possession (squatters rights) and Council right to assess proposal on planning grounds with no planning objection to the proposal with the appellants arguments which should be pursued through the courts;
- Provision that applicant not entitled to carry out development solely by grant of permission applies here and if appellant wishes to exercise legal claim must do so through the Courts.

6.3. **Planning Authority Response**

The Planning Authority response is summarised as follows:

Proposal considered to be consistent with the policies and objectives in the County Development Plan and refer the Board to the Planners report on file dated 7/9/18;

6.4. **Observations**

No observations on file

7.0 **Assessment**

7.1. **Introduction**

The main issues arising in the consideration of this appeal are as follows:

- Principle of Proposal
- Land Ownership
- Site Layout
- Appropriate Assessment

7.2. **Principle of Proposal**

- 7.2.1. The proposal seeks to provide a car port and garage to the side of the existing dwellinghouse. The principle of extending the permitted dwelling for ancillary accommodation is acceptable. I also consider that the scale and design of the proposal are appropriate to the context within which it is proposed.

7.3. **Land Ownership**

- 7.3.1. I note the appellant's grounds of appeal and response to same in respect of the contested landownership of the strip of land between the existing hedge and the eastern boundary delineated in the site location and layout plans. I note the land registry folio submitted on the applicants behalf in response to the further information request. I also note reference to claims of adverse possession outlined in the documentation on file. This is a civil matter and I would refer the Board, in this regard, to Section 34(13) of the Planning and Development Act 2000, as amended which states: "A person shall not be entitled solely by reason of a permission under

this section to carry out any development”. In respect of the validity of the application I would note that in response to a request from further information the applicant submitted a letter from their legal representative which included a land registry map. This boundary outlines the site boundary as per that proposed in the accompanying documentation including a revised site layout plan which also delineates the ‘disputed’ area. I consider that sufficient legal interest has been provided to facilitate the making of the application. I would also note that the sightlines shown are within lands within the applicants control having regard to the land registry map on file.

- 7.3.2. Notwithstanding that this is a civil and not a planning matter I note the appellant’s theory pertaining to the possibility that during the time between registrations of folios that potential errors in the electronic database relevant to the mapping of same could have occurred. I consider that there is absolutely no evidence to support this theory. However, as I noted above, this is a civil matter most appropriately resolved outside the parameters of the planning system.

7.4. Site Layout

- 7.4.1. The appellant’s state that the site plan is inaccurate with reference to the presence of a building located on the application site with recent photographs showing a shed with a canopy in the SW corner of the site and state that same does not appear in the current application. I consider that the existence of the ancillary structure referenced on the site and absence from the site layout plan does not preclude the Boards examination of the subject matter of this appeal which is the car port/garage.

7.5. Appropriate Assessment

- 7.5.1. Having regard to nature and scale of the proposal which seeks to provide a modest extension to an existing approved dwelling, 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.

8.0 Recommendation

- 8.1.1. I recommend that planning permission should be granted subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the nature and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of traffic safety and would be acceptable in terms of house design. The proposed development 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 24th day of July, 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 external finish of the proposed car port and garage shall comply with details indicated on documentation submitted to Planning Authority on 24th July 2018.

Reason: In the interest of visual amenity.

Una Crosse
Senior Planning Inspector

November 2018