



An
Bord
Pleanála

Inspector's Report ABP-304403-19.

Development	Demolition of portion of an existing garage, retention and completion of garage/boat shed and back yard recreation area.
Location	Dennbane, Carrickaboy, Co. Cavan.
Planning Authority	Cavan County Council.
Planning Authority Reg. Ref.	19/78.
Applicant(s)	Damien and Amanda Smith.
Type of Application	Planning permission.
Planning Authority Decision	Split Decision.
Type of Appeal	First Party
Appellant(s)	Damien and Amanda Smith.
Observer(s)	None.
Date of Site Inspection	26 th day of August, 2019.
Inspector	Patricia-Marie Young.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History.....	5
5.0 Policy and Context.....	6
5.1. Local Planning Policy Provisions.....	6
5.2. Natural Heritage Designations	6
6.0 The Appeal	7
6.1. Grounds of Appeal	7
6.2. Planning Authority Response	8
7.0 Assessment	9
8.0 Other Matters Arising.....	13
9.0 Recommendation.....	14

1.0 Site Location and Description

- 1.1. The appeal site has a stated 0.3189ha area and is located in the Townland of 'Dennbane', c1km to the south of Carrickaboy, and c8.5km to the south east of the centre of Cavan town, in County Cavan.
- 1.2. The topography of the site rises steadily in a westerly direction to where the dormer style dwelling house and a detached single storey. From this point the site levels are relatively flat with retaining walls on the northern and western site boundaries. In this area the extended garage/shed/dog kennel structure is sited with the southern side of this structure lying near the adjacent property which consists of a single storey bungalow with a modest garage type structure.
- 1.3. The main envelope of the dwelling house appears to date to the early 2000's as does the front section of the extended garage structure on site. The dormer roof and the shed/garage/dog kennel structures appear to be later additions.
- 1.4. The irregular shaped site is situated on the western side of a restricted in width local road (Note: L2519) and it forms part of a group of four one-off detached dwellings with the subject property located on the northernmost end of this group. To the north and west of the site the neighbouring land is in agricultural use. The adjoining local road contains several one-off detached dwellings as well as a few farmsteads.

2.0 Proposed Development

- 2.1. Planning permission is sought for the following:
 - Demolition of a portion of the rear section of an existing garage structure;
 - Retention and completion of the remainder of the existing garage/boat shed.
 - Retention of backyard and its use as a recreation area;
 - Planning permission for an 'astro' turf playing area in the backyard area;
 - All associated site works.
- 2.2. According to the Planning Application form the existing dwelling house on site has a stated 301m² gross floor area; the covered area linking the two shed/garage structures has a stated 32.6m² gross floor area; the boatshed/garage structure has a

stated 173.57m² gross floor area. In relation to gross floor area of work to be retained on site it indicates 38.10m² dog kennels; and, 168.15m² boatshed/garage and the covered area.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority's notification of decision indicates a **SPILT DECISION**. In this regard, they decided to **grant planning permission** for the demolition of the rear section of the existing garage; the retention of the backyard and use of the same as a recreation area; and, the retention of the 'astro' turf playing area in the rear garden area of the subject property subject to 3 no. conditions. This is set out under Schedule 1 and 2 of the notification.

3.1.2. In relation to the retention and completion of the remainder of the existing garage/boat shed element of the development sought they decided to **refuse retention permission** for the following stated reason: *"Having regard to the scale, design and nature of the garage/boat shed to be retained and to the scale of the existing house on site, it is considered that the development represents non-ancillary and non-subservient development associated with the main dwelling on site. The development represents two garages on site and therefore it is considered that the development materially contravenes Objective DM09 of the Cavan County Development Plan, 2014-2020. It represents piecemeal, haphazard, disorderly development, is inconsistent with the existing established pattern of development on the adjacent sites, 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. Planning Reports

The Planning Officer's Report is the basis of the Planning Authority's decision.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Site History

P.A. Reg. Ref. No. 18/369: Planning permission was sought to retain and complete existing domestic garage storage extension and concrete yard to the rear of existing dwelling. The Planning Authority's decided to **grant** the concrete yard and **refuse** the retention and completion of the garage structure. The stated reason reads:

"Having regard to the scale, design and nature of the domestic garage storage extension, and to the scale of the existing house on site, it is considered that the development represents non-ancillary and non-subservient development associated with the main dwelling on site. It is considered that the development would materially contravene Objective DM09 of the Cavan County Development Plan 2014-2020, represents piecemeal, haphazard, disorderly development, is inconsistent with the existing established pattern of development on the adjacent sites, would set an undesirable precedent for developments of this nature and would be contrary to the proper planning and sustainable development of the area."

Enforcement File Ref. No. 18/031: Relates to the construction of an unauthorised garage/shed within the curtilage of the existing dwelling house.

P.A. Reg. Ref. No. 16/223: Planning permission was **refused** for a development consisting of the erection of a domestic storage (Note: Gross Floor Area of 174m²) shed and concrete yard to the existing dwelling. The stated reason reads:

"The proposed development would materially contravene the Development Management Policy for one-off rural houses as stated in the Cavan County Development Plan 2014-2020, as follows: Policy DM09 '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'. The development of a second detached domestic garage which is large in scale (being 174m²) on the site, is inconsistent with the existing established pattern of development on the adjacent sites and would therefore be contrary to the proper planning and sustainable development of the area."

P.A. Reg. Ref. No. 02/1484: Planning permission was **granted** for the conversion of the detached bungalow into a dormer dwelling, a garage, dual entrance, gates and piers, waste water treatment system. I note to the Board that this development included a 38m² detached garage structure.

P.A. Reg. Ref. No. 01/833: Planning permission was **granted** for the erection of 4 no. fully serviced dwellings (bungalows), domestic garages, proprietary waste water treatment system, entrance, gates and piers.

5.0 Policy and Context

5.1. Local Planning Policy Provisions

- 5.1.1. The appeal site is located outside of the development envelope of any settlement in rural County Cavan and is therefore subject to the planning policy provisions set out in the Cavan County Development Plan, 2014 to 2020. Policy DM09 relates to domestic garage structures.

5.2. Natural Heritage Designations

- The appeal site is located c10.2Km to the south east of Special Protection Areas: Lough Oughter SPA (Site Code: 004049).
- The appeal site is located c10.6km to the south east of Special Area of Conservation: Lough Oughter and Associated Loughs (Site Code: 000007).
- The appeal site is located c10.7 to the north of Special Protection Areas: Lough Sheelin SPA (Site Code: 004065).

5.3. EIA Screening

5.3.1. Having regard to the nature and scale of the development for which retention is sought, the significant separation distance between the site and the nearest designated Natura 2000 sites as set out above, the lack of any hydrological link to these sites or any other quantifiable link, I consider that 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 in this case

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows:

- The size of garage and recreational area reflects the appellants needs.
- The garage is required to secure the appellants property.
- This development does not impact adversely on the visual amenity of the area.
- The breaking up of the garage structure's built form is reflective of traditional farmyard structures. It also reduces its mass and visual impact on its setting.
- There is no basis for the Planning Authority to conclude that the development is non-ancillary and non-subservient to the main dwelling on site. A condition could be imposed restricting the use of the garage.
- It is not accepted that it is not subservient to the dwelling house on site.
- The garage/boatshed and dog house are only used by the appellants and their family.
- The appellants propose to remove the roof from the kennels to reduce the length of the structure by 4.81m.
- The size of the garage is determined by what it holds. In this instance two boats, quad bikes, tools and so forth.
- At the time of construction of the subject garage the appellants were unaware that carports were not permitted under DM09 of the Development Plan. The roofed area link between the two garage structures is used as a clothes drying

area, a covered barbeque area and acts as a covered recreational area if it is raining. The appellant does not object to a condition indicating that this area not be used as a carport.

- To improve the appearance of the subject garage it is proposed to replace the roller doors with domestic style garage doors.
- The demolition of the walls in the surrounding area is not considered necessary and was only proposed to satisfy the Planning Authority's concerns.
- Along the same road as the subject site there are garages and outbuildings of a similar size to that sought under this application.
- This development accords with Policy DM09 of the Development Plan.

6.2. Planning Authority Response

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

- The appellants were advised via email on what would be acceptable on the site and it is not correct of them to indicate that their request for a pre-planning was refused.
- The appellant was clearly advised that if the red and blue area along with the existing garage, which has a floor area of 36m², was demolished then the Planning Authority may be supportive of the retention of the remaining area of the garage as this would provide a single garage of 136m² which the Planning Authority considered was more than sufficient on this site. This advice was not taken on board.
- The Planning Authority have been fair and reasonable throughout this process.
- In relation to the other issues raised it is considered that these have been addressed in their Planning Officers assessment of the development sought.
- The scale, design and nature of the structure sought is not acceptable.
- This structure is not subservient or ancillary to the main dwelling on site.
- The Planning Authority considers that this structure is inconsistent with the existing and established pattern of development of adjoining sites.

- This development materially contravenes Objective DM09 of the Development Plan.
- The Board is requested to uphold its decision.

7.0 Assessment

- 7.1. From my review of the file, all relevant documents and inspection of the site as well as its environs, I consider that the key focus for assessment in this appeal case relates to the Planning Authority's cited reason for refusal, in particular the principle of the retention and completion of the garage/boat shed structure; its visual impact on the amenities of the area; and, whether it would establish an undesirable principle for other similar developments.
- 7.2. Notwithstanding, I first of all raise a concern that I am not convinced that the Board would have reached the same split decision as the Planning Authority in relation to the retention of the backyard and its use as a recreation amenity area alongside the provision of an astro turf playing area to the rear of the existing dwelling on site. I raise this concern based on my inspection of the site, in particular, I observed that the area to the rear of the dwelling house is predominated by hard surfacing; minimal deep soil and limited evidence of surface water capturing. In addition, the information submitted with this planning application puts forward very limited surface water drainage infrastructure and I consider that the Planning Authority in their conditions attached to their split condition placed limited requirements on the applicant to appropriately deal with surface water drainage in a sustainable manner.
- 7.3. I also raise a serious concern in relation to the existing wastewater treatment system and whether it is present as suggested in the submitted plans and documentation.
- 7.4. This did not appear to be the case during my inspection of the site and there was no evidence of such infrastructure in the front garden area or indeed infrastructure associated with desludging and so forth.
- 7.5. Of further concern to the rear of the site there appeared to be a vent pipe sticking up proud of the rear ground level. This vent pipe is located in the gravel area west of the concrete area and it is unclear what infrastructure it relates to on-site.

- 7.6. Based on the above I raise serious concerns in relation to the treatment of surface water on this site and I am not convinced that the surface water drainage infrastructure alongside other infrastructure, in particular the wastewater treatment system, is as suggested in the documentation submitted. I acknowledge that this is a substantive new issue for the Board to consider in their examination of this particular appeal and I recommend that they consider the proposed development *de novo*. Should the Board be minded to similarly grant planning permission for the demolition of a portion of the rear section of the existing garage, the retention of the back yard and use of the same as recreation amenity space I advise that more robust and site appropriate conditions are required.
- 7.7. The appellants in their submission to the Board raise several perceived concerns in relation to the Planning Authority's handling of this application. On these concerns I am cognisant that the Board does not have an ombudsman role on such matters; notwithstanding, from my review of the documentation on file I can find nothing that would substantiate that this application was treated in an unfair or unreasonable manner by the Planning Authority. It would also appear that the Planning Authority engaged in writing in relation to what may or may not be deemed appropriate in terms of ancillary structures in such a domestic setting.
- 7.8. It is also clear from the planning history of the site that the principle of a garage of the scale, mass and dimensions now sought was not deemed to be acceptable based on it being a structure that, if permitted, would conflict with Policy DM09 of the Cavan County Development Plan, 2014 to 2020, also in terms of visual amenity impact and the established pattern of development in this area.
- 7.9. These conclusions were evident in the Planning Authority's decisions P.A. Reg. Ref. No. 16/223, where planning permission was sought for 174m² garage at the same location on site and of similar built form, mass as well as scale to that now sought. It was also evident in the Planning Authority's decision P.A. Reg. Ref. No. 18/369 where the retention and completion of the subject structure which is similarly now sought for permission under this current application was refused. The stated reasons for refusal in both previous applications relating to this site were consistent with one another and I note that both applications were made by the appellants as were previous applications made after the parent grant of permission under P.A. Reg. Ref. No. 01/833.

- 7.10. I further note that the previous applications P.A. Reg. Ref. No. 16/223 and P.A. Reg. Ref. No. 18/369 were considered under the same local planning policies as the current application.
- 7.11. In relation to the local planning policy provisions Policy DM09 of the Cavan County Development Plan, 2014 to 2040, I note to the Board that it states that: *“one detached domestic garage only shall be permitted for any single dwelling. Domestic garages shall be single story, domestic in appearance and in character with the domestic dwelling. Carports are not permitted in rural locations.”*
- 7.12. Having regard to the submitted drawings, the nature, scale, built form, the design and layout of the subject structure I share the view of the Planning Authority in this instance that despite the presence of a linked roof together with ancillary built elements between the 38m² garage permitted under P.A. Reg. Ref. No. 02/1484 (but which I note is not located in the position and location on site where it was permitted nor as a built form does it fully correspond with the documentations submitted with this planning application) and constructed sometime after that this permitted garage was constructed as a standalone structure. I observed on site that is also a separate standalone function despite being the physically linked by a roof which connects it to the subject shed structure for which this application relates. I also observed that the subject shed structure also comprises of physically separate entities with the rear most part which essentially contains a dog kennel not being internally linked.
- 7.13. To permit the subject shed in the form proposed would conflict with Policy DM09 of the Development Plan and by doing so it is reasonable to conclude would establish an undesirable precedent for similar developments within the domestic setting. The demolition of part of it as was granted by the Planning Authority in my view only somewhat lessens its visually incongruity within its site and lessens its adverse visual amenity impact on its surroundings.
- 7.14. I am further of the view that the nature, scale, built form, the design and layout of the subject structure is out of context and scale with the dwelling house at this location as well as with the set piece of four single storey detached dwelling houses that it forms part of.
- 7.15. These four dwellings share similarities in their built forms through building to space relationships.

- 7.16. The consolidation of the subject structures along the southern side boundary with c0.3m setback from the shared boundary results in a non-complimentary additional built structure within this group that results in a visually overbearing and non-sympathetic rural boundary with the adjoining residential property to the south of it. It is visually inappropriate whether viewed from the private domain of properties adjoining it or the public domain. It also conflicts with the rural character of this area as well as the residential character and original built integrity of this group of detached rural dwellings in a manner that is non-consistent with the established pattern of development in this area for such developments.
- 7.17. While I am cognisant of the appellants arguments for such a structure as put forward in their submission to the Board in my view these do not outweigh the fact that this development conflicts with Policy DM09 of the Development Plan; that it is visually detrimental to its rural setting; and, that it has the potential to give rise to an undesirable precedent if it were permitted. I do not consider that the appellant proposes substantive measures that would overcome these concerns, nor do I consider that conditions could be used to overcome these concerns in any meaningful manner.
- 7.18. Moreover, I raise concerns with regards to the level of hard stand and removal of deep soil associated with the cumulative works on site. This includes what appears to be the placement of astro turf over a substantial, though previously permitted concrete yard area.
- 7.19. On this point I note that despite the significant lateral separation distance between the site and the nearest Natura 2000 sites that the site is located within the buffer zone of Lough Oughter SPA (Site Code: 004049); the Special Area of Conservation: Lough Oughter and Associated Loughs (Site Code: 000007); and, the appeal site is located c10.7 to the north of Special Protection Areas: Lough Sheelin SPA (Site Code: 004065).
- 7.20. I also note that Policy EP016 of the Development Plan promotes the use of SUDS systems for all developments; Policy NHEO53 of the Development Plan promotes best practice in design, layout construction and operation of all developments through the requirement for the submission of Sustainable Urban Drainage Systems (SUDS) and that developments shall be designed to ensure both water quality

protection and flood minimisation alongside where necessary to provide a good balance between hard surfaces, such as road and parking areas, and green spaces, in order to absorb rain water.

- 7.21. I am not satisfied based on the information on file that it has been demonstrated that the site would achieve pre-development levels and the use of appropriate SUDS systems. Further having regard to the type of storage of the shed as indicated in the visual documentation submitted with this application that measures would be included to ensure that no pollutants would leave the site or contaminate ground water. This matter I consider is a concern also for the entirety of the development sought under this application.
- 7.22. On the matter of Appropriate Assessment, having regard to the nature and scale of the proposed development and nature of the receiving environment; and, the significant distance to the nearest European Site, I consider that no appropriate assessment issues are likely to 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 subject to standard safeguards.

8.0 Other Matters Arising

8.1. Materially Contravene

- 8.1.1. The reason of refusal cited by the Planning Authority includes that they consider that the development for which refusal is recommended in their split decision, i.e. the retention and completion of the garage/boatshed “*materially contravenes Objective DM09 of the Cavan County Development Plan 2014-2020*”. I therefore advise the Board should they be minded to permission for this component of the development sought, that they have regard to Section 37(2) of the Planning and Development Act, 2000, as amended.
- 8.1.2. This Section of the said Act sets out that if the Board on appeal, decide to refuse permission on the grounds that a proposed development materially contravenes the Development Plan, the Board may only grant permission in certain circumstances. While I am cognisant that section 34(10) of the said Act requires that in all cases the main reasons and considerations on which the decision on an application is based must be stated, this is particularly important in terms of setting out the reasons as for

why it is considered that the development would contravene the provisions of the Development Plan.

- 8.1.3. As set out in the previous sections of this assessment it is my view that to permit the retention and completion of the garage/boat shed/dog kennel would conflict with Policy DM09. I do not necessarily consider that in this instance it would materially contravene with this Development Plan policy.

9.0 Recommendation

- 9.1. I have read the submissions on the file, visited the site, had due regard to the applicable Development Plan and all other matters arising. I recommend that retention permission be granted for the back yard and use of the same as a recreation area together with planning permission for the creation of an astro turf play area together with associated works. I recommend that retention permission be refused for the garage/boathouse shed and planning permission for the completion of the same for the reasons as set out below.

Grant permission to retain the back yard and use of the same as a recreation area and permission to create an astro turf play area/basketball play area together with associated works to the rear of the existing dwelling on site.

REASONS AND CONSIDERATIONS

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

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 4th day of March 2019 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. (a) The astro turf and basketball court hereby permitted shall be for domestic use associated with the adjoining dwelling and shall not be used for any other purpose.

(b) The astro turf and basketball court shall not be artificially lit save without a prior grant of planning permission.

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

3. The drainage arrangements, including the disposal of surface water and grey water, shall comply with the requirements of the planning authority for such works. Clarification of such works in writing shall be sought within 3 months of the date of permission from the Planning Authority. The required works shall be carried out and completed to satisfaction of the Planning Authority.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

4. (a) Surface water from the site shall not be permitted to drain onto the adjoining public road or onto adjoining properties.

(b) Only clean, uncontaminated storm water shall be discharges to the surface water drainage systems and/or soakpits on site.

Reason: In the interest of traffic safety and in the interests of orderly development.

Refuse permission for the retention and completion of the remainder of the existing garage/boat shed.

Reasons and Considerations

1. Having regard to the policies of the Cavan County Development Plan, in particular DM09, which strictly limits the number of garages in a domestic context which this development conflicts with; alongside the overall scale, bulk, massing, built form and siting of this structure in what is a rural residential site; and, having regards to the pattern of development in the vicinity which includes established residential dwellings on its southern side it is considered that this development would seriously injure the visual amenities of the area; the established residential amenities of properties adjacent to it; and, it would be a development that is out of scale and character with this rural residential site and the character of its rural landscape setting. The proposed development, would therefore, conflict with the objectives of the Development Plan in relation to development permitted in a domestic context, it would establish an undesirable precedent for other similar developments and it would be contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector

29th day of August, 2019.