



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304611-19

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<b>Development</b>	Change of use of lands to side of house from public amenity to private open space, Erection of a fence, and installation of a paved drive-in to the front and side of the house
<b>Location</b>	607 River Forest, Leixlip County Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	19281
<b>Applicant(s)</b>	Agnes Smyth.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Split Decision
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Agnes Smyth.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	16 <sup>th</sup> September 2019.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

The appeal site which has a stated area of 391.2m<sup>2</sup> relates to an established dwelling site no 607 River Forest and an adjacent strip of land located in Leixlip, Co Kildare. The driveway to the front of the dwelling is largely paved providing parking area. To the side of the dwelling a hedge and timber post and rail fence run along the southern side boundary adjacent to the public footpath.

## 2.0 Proposed Development

- 2.1. The proposal as set out in public notices involves:
- 2.2. Retention of (1) Change of use of land to side of house from public amenity to private open space, and
  - (2) erection of a fence to the boundary of the site, and
  - (3) for the installation of a paved drive-in to the front and side of the house.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1 By order dated 08/05/2019 Kildare County Council issued notification of a split decision to grant retention for installation of a paved drive in to the front and side of the house subject to two conditions including Condition 2 *“This area to the front of the site shall be used for domestic related uses ancillary to the dwelling and shall not be used for the carry out of any commercial use or any trade”* and to Refuse permission for (1) change of use of lands to side of house from public amenity to private open space. (2) Erection of a fence to the boundary of the site, for the following reason:

*“1. The proposed development materially conflicts with the terms of Permission Ref 80/926 and with Condition No 21 of that permission, which required areas shown as open space on the plan submitted to be reserved as public open space. The development for retention if permitted, would therefore conflict with the terms of a*

*previous permission, and would act as an undesirable precedent to further such development elsewhere in the County, and would therefore be contrary to the proper planning and sustainable development of the area.”*

*2. Having regard to the change of use from public open space to private open space, it is considered the development would conflict with the provisions set out under policy RA2 “Prohibit the development of areas zoned open space / amenity or areas which have been indicated in a previous planning application as being open space” of the Kildare County Development Plan 2017-2023 and therefore the retention of the development would be contrary to the proper planning and sustainable development of the area.*

*3. The applicant has failed to demonstrate how all the public surface water sewers and manholes can be sufficiently accessed and maintained and therefore the retention of the development would be prejudicial to public health.”*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Planning report notes that River Forest was taken in charge by the Council c1988 including all roads, footpaths open spaces and services. The retention of the paved area to front and side of dwelling is acceptable however the proposed change of use not. A split decision was recommended accordingly.

#### **3.2.2. Other Technical Reports**

Environment Section report indicates no objection.

Water Services report recommends refusal as public open space contains public surface water sewers and manholes. The proposal would create insufficient access and egress to assets belonging to the local authority.

### **3.3. Prescribed Bodies**

Irish Water – No objection.

### 3.4. Third Party Observations

- 3.4.1 River Forest Residents association object to change in public open space for private use. Submission notes that the issue is ongoing since October 2016. Erection of fencing and hedging at the footpath edge has the potential to reduce visibility and compromise road safety.
- 3.4.2 Robert Byrne, 577 River Forest, objects to the proposal. Asserts that a car business operates from the site and the public road is being used inappropriately to display cars. Negative impact on residential amenity. Precedent for unauthorised development. No objection to driveway alterations. Illegal fencing should be taken down and original boundary reinstated.

## 4.0 Planning History

The following planning history is noted in Planner's report. (Primary source documentation is not provided on the Board's file)

**80/926** Governing permission for River Forest estate. Includes condition 21 *"The areas shown as open space shall be levelled, soiled, seeded and landscaped as shown on the landscaping plan submitted on 04/07/80."*

**04/2033** Application for retention of attic conversion. Deemed withdrawn.

**UD6857** Enforcement Case.

**18/0785** Refusal of permission for retention of change of use of lands to side of house from public amenity to private open space, and (2) erection of a dance to the boundary of the site. and (3) for installation of a paved drive in to the front and side of the house.

**19219** 530 River Forest. Permission granted for demolition of rear conservatory and construction of a new double storey extension comprising of ground floor living dining area and 1<sup>st</sup> floor bedroom, external roof and wall finishes to match existing dwelling. During the course of the application issue arose with regard to extent of site ownership which was addressed in response to a request for additional information.

## 5.0 Policy Context

### 5.1. Development Plan

The Kildare County Development Plan 2017-2023 refers.

Site is on lands zoned 'B' Existing Residential.

Chapter 14 Sets out Policies in relation to Recreation and Amenity. RA 2 is the policy to *“Prohibit the development of areas zoned open space / amenity or areas which have been indicated in a previous planning application as being open space.”*

### 5.2. Natural Heritage Designations

Rye Water Valley Carton SAC

### 5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, and to 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 environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal is submitted by Paul Redmond Architectural Services Ltd. on behalf of the first party. Grounds of appeal are summarised as follows:

- The first party purchased this land from the original developer. The land was never owned by Kildare County Council and the property has been maintained by the applicant for the past thirty years.
- At no point did Kildare County Council object to grass cutting and hedge trimming.

- Similar Situation in house opposite 607 River Forest and local authority did not request removal of hedge.
- In an effort to curtail dumping the fence was erected and it will be removed once hedgerow has matured.
- Precedent for permission on lands zoned open space in respect of Confey College.
- Not clear that there is an actual change of use as the land is privately owned.
- Hedgerow on the opposite side where local authority did not request removal.
- Regarding access to Irish Water infrastructure, the boundary fence is erected around the manholes enabling free access. Second manhole visible from footpath is easily accessible.
- Irish Water have permission to enter the site to carry out necessary maintenance.

## 6.2. **Planning Authority Response**

6.2.1 The response of the Planning Authority is summarised as follows:

With regard to refusal reason no 2 it should be noted that in the case of planning reference 19/219 which relates to 530 River Forest, the applicant was able to demonstrate by way of land registry documentation full ownership of the application site. The current applicant has not demonstrated full legal ownership of the application site. Kildare County Council respectfully requests An Bord Pleanála to uphold the decision to refuse.

## 6.3. **Observations**

6.3.1 Observations received from River Forest Residents Association were received by the Board outside the appropriate period and are therefore deemed invalid.

## 6.4. **Further Responses**

6.4.1 Submission by the first party in the form of a letter from Ballagh Solicitors, acting on behalf of the vendor of the property at 607 River Forest confirms that they are

arranging for the Deed of Transfer to be executed by all parties. All purchase monies in respect of the site have been paid.

6.4.2 The Planning Authority notes the submission and await signed deed of transfer.

## 7.0 **Assessment**

7.1. The key questions arising in the appeal are generally those as contained in the reason and considerations of the planning authority relating to the principle of development in the context of the planning history on the site, the housing objectives of the planning authority as set out in the County Development Plan and the impacts on residential amenity arising from the proposed development. The matter of appropriate assessment also needs to be addressed. On the matter of the disputed ownership or legal status of the green strip, the evidence on the appeal file is inconclusive however in any event I consider that this is a legal issue and not a matter for the Board to determine therefore it is appropriate to focus the assessment on the planning merits of the case.

7.2. As regards the retention of the paved driveway to the front and side of the house, I would concur with the Planning Authority decision that this is appropriate and indeed this element is acceptable to all parties to the appeal.

7.3. As regards the incorporation of the public amenity lands into private open space and erection of fence I consider that these elements are clearly at odds with the policies and objective of the development plan with regard to open space, in particularly RA 2 to "Prohibit the development of areas zoned open space/amenity or areas which have been indicated in a previous planning application as being open space." While the historical planning files, and specifically details of governing permission 80/926, have not been provided to the Board, I am satisfied that the area of land now incorporated within the boundary fence, formed an essential element of the incidental open space within the development contributing to the openness, amenity and recreational element of the overall housing development. While the area is incidental open space, not intended for active play, it rather serves for passive recreation and visual amenity. It is a design element of the overall estate and creates a link to adjacent such areas. In my view there is no justification for the loss of the open space for the exclusive use by the applicant. I consider that the principle of the

proposal is entirely unjustified and is at odds with the reasonable aims and objectives of the development plan. The proposal would set an undesirable precedent for similar such development and would therefore be contrary to the proper planning and sustainable development of the area. On the issue of water services infrastructure, I note the submissions of the first party indicating that access to surface water sewers can be facilitated.

- 7.4. As regards Appropriate Assessment, having regard to the location of the site within an established mature residential area, together with the nature of the proposed development, I am satisfied that there is no potential for impact on any Natura 2000 site.

## **8.0 Recommendation**

- 8.1. I recommend a split decision in this case (a) permitting the retention of installation of paved drive in to the front and side of the house and (b) refusing permission to retain (1) Change of use of lands to side of house from public amenity to private open space (2) Erection of a fence to the boundary of the site for the following reasons and considerations

## **9.0 Reasons and Considerations**

Retention permission is granted having regard to the scale, location and pattern of development in the area it is considered that subject to compliance with conditions set out below the proposed retention of paved drive in to the front and side of the house would not seriously injure the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

### **Conditions**

1. The paved drive-in shall be retained in accordance with the plans and lodged with the application, 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. Use of the paved area shall be for purposes incidental to the enjoyment of the dwelling house as such.

Reason: To clarify the permission in the interest of residential amenity.

**Refuse permission to retain (1) Change of use of lands to side of house from public amenity to private open space (2) Erection of a fence to the boundary of the site for the following reasons and considerations**

#### **Reasons and Considerations**

The proposed development would result in the enclosure of an area of public open space which would detract from the open character of the estate. It is considered that the retention of the fence and the use of the area of ground as part of the curtilage of the dwelling would seriously injure the amenities of the area and of property in the vicinity and would set an undesirable precedent for similar such development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Bríd Maxwell  
Planning Inspector

16<sup>th</sup> September 2019