



An
Bord
Pleanála

Inspector's Report

ABP-305223-19

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| Development | House with all site and ancillary works. Located within the Patrick Street Architectural Conservation Area. |
| Location | 103 Patrick Street, Kilkenny. |
| Planning Authority | Kilkenny County Council |
| Planning Authority Reg. Ref. | 19393 |
| Applicant(s) | Moroney Electrical Contractors |
| Type of Application | Permission |
| Planning Authority Decision | Refuse Permission |
| Type of Appeal | First Party |
| Appellant(s) | Moroney Electrical Contractors |
| Observer(s) | Martin Peters and Others |
| Date of Site Inspection | 31 st December, 2019 |
| Inspector | Stephen Kay |

1.0 Site Location and Description

- 1.1. The appeal site is located to the rear of No.103 Patrick Street in Kilkenny and comprises a backland site. No. 103 is a three storey terraced townhouse which is included on the National Inventory of Architectural Heritage. The site is accessed via an archway on the northern side of No.103 and the site to the rear comprises the garden to No.103 which is approximately 40 metres in length and c.7 metres in width.
- 1.2. The site is bounded to the north by the rear gardens of two properties at Nos. 104 and 105 Patrick Street that are in residential use and further to the north beyond these sites is a three storey building that is predominately in office use. To the south, the site is bounded by an apartment building that is located to the rear of No. 101 Patrick Street.
- 1.3. The stated area of the appeal site is 0.028 ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a storey and a half / dormer style house located on the site to the rear of No.103 Patrick Street. The house is proposed to be located such that it would be separated from the existing house at No.103 by c.21 metres.
- 2.2. An access road to the site is proposed to run from the archway located to the northern side of the existing frontage of No.103 onto Patrick Street and run along the northern boundary of the site. To the south of this access route, a retained area of private amenity space to the rear of No.103 is indicated. This area of retained private amenity space is indicated as being c.60 sq. metres in area. To the west, rear of the proposed dwelling and area of private amenity space of c.50 sq metres is indicated as being provided.
- 2.3. The design of the proposed house is such that it would be two storey on the south west facing elevation and single storey on the north east facing elevation which faces towards the rear of the buildings on Patrick Street. The stated floor area of the proposed dwelling is 135 sq. metres and the overall height of the proposed development to roof level is indicated as 6.995 metres.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse permission for a single reason as follows:

Having regard to the location of the site in the rear garden of an existing dwelling which forms part of a terrace along Patrick Street Kilkenny, it is considered that the proposed development would result in backland development which would be haphazard and uncoordinated and would be prejudicial to the overall proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer notes the urban location of the site and the third party submissions received. The principle of residential development is considered acceptable and the layout is considered to meet all relevant standards. Issues relating to water services and the concerns of the conservation officer regarding the front elevation / impact on the ACA are considered such that they could be addressed by way of condition. A grant of permission is recommended by the case planning officer. A second report from the Senior Planner on file identifies issues with regard to the piecemeal and uncoordinated approach to the proposed development and the backland area in the vicinity of the site and is stated to be such that it would compromise the overall development of these backland areas.

3.2.2. Other Technical Reports

Area Engineer – No report submitted.

Conservation – Recommends further information relating to the undertaking of archaeological testing in the back garden of No.103. The report also notes that

unauthorised alterations to the windows of No.103 (included on the NIAH) have been undertaken since 2017.

3.3. **Prescribed Bodies**

Irish Water – further information required.

3.4. **Third Party Observations**

Third party observations received. The main issues raised in this submission are as follows:

- Impact on amenity and value of surrounding properties.
- Precedent regarding impact on ACA,
- Impact on light, privacy and overlooking of surrounding properties,
- Over development of the site,
- The proposed development will be overlooked and overshadowed by surrounding buildings.

4.0 **Planning History**

The report of the planning officer does not record any planning history relating to the appeal site.

5.0 **Policy Context**

5.1. **Development Plan**

The site is located in an area that is zoned Existing Residential under the provisions of the Kilkenny City and Environs Development Plan, 2014-2020. The stated objective for the zone is '*to protect provide and improve existing residential amenity*'.

The site is located within the Patrick Street ACA. A number of specific development management standards for this ACA are set out in the plan including the following:

PSACA6: *'To avoid backland development which would negatively impact on the character of this area'*.

No.103 on the appeal site is included in the National Inventory of Architectural Heritage (NIAH). It is not included on the record of protected structures for County Kilkenny. No 103 is however identified as being of regional significance in the NIAH and the planning authority is therefore obliged to consider such structures for inclusion in the RPS. This is reflected in Objective7K of the Plan which states as follows:

'to respond to the ministerial recommendation to include in the Record of Protected Structures, structures which have been identified as of regional, national, or international significance in the NIAH survey of the city and county published in 2006'.

The site is located within an area that is identified in the plan as an area of archaeological potential.

5.2. Natural Heritage Designations

The site is not located within or in close proximity to any European sites.

The closest site is the River Nore SPA and River Barrow and River Nore SAC sites which are located c.250 metres to the north east of the appeal site at the closest point.

5.3. EIA Screening

Having regard to the limited scale of the development, the existing urban developed nature of the immediate receiving environment and the absence of any significant emissions from the proposed development 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 following is a summary of the main issues raised in the first party grounds of appeal:

- That the site access proposed via the existing archway at No.103 also has the potential to provide access to the rear of the adjoining property to the north.
- That an area of 60 sq. metres would be retained to the rear of No.103 Patrick Street. A 50 sq. metres garden to the rear of the proposed house would be provided.
- That there would be a separation distance of 22 metres to the existing house at No.103.
- That the proposed house would not have any windows in the north or south elevations and would not overlook surrounding properties.
- That the planning Officer considered the layout acceptable and that the rear private amenity space would not be overlooked.
- That the recommendation to grant permission was over ruled by the senior planner who considered the development to be piecemeal in nature and inappropriate form of development for this backland site. The Senior Planner did however recognise that relevant development plan standards regarding separation distances etc. were met.
- That the proposal is not a large redevelopment and would serve to bring an underutilised and neglected backland site into use. It would not impact on the streetscape or the setting of any protected structure. The development plan policy regarding infill sites (paragraph 11.8.9) would be complied with.
- That the development would facilitate the long term management of the area to the rear of the main buildings and in time would make possible development to the rear of Nos.105/106. The offer is there for access to these sites to be provided in the future and these sites could be developed with the same building line as the proposed development on the appeal site.

- That the infill nature of development proposed is consistent with the Guidelines for Planning Authorities on Sustainable Residential Development (2009) which supports the development of individual and assembled backland and infill sites.
- That with the exception of the rear areas to Nos. 105/106, there are no other significant redevelopment opportunities in the vicinity. It is not therefore clear how the proposal is piecemeal and un coordinated.

6.2. Planning Authority Response

Submission received stating that the Planning Authority has no further comments to make on the grounds of appeal.

6.3. Observations

An observation on the appeal has been submitted by Martin Peters and Others. The following is a summary of the main issues raised in this appeal:

- That the proposal constitutes poor quality backland development and should be refused.
- That there would be a loss of light and privacy to their property were the development to proceed. It would prevent the future return of their building to a residential use in the future.
- While the proposed development meets the development plan standards, it is out of scale with surrounding developments and is completely overlooked and overshadowed by existing buildings.
- That the area of private amenity space proposed to be retained with No.103 Patrick Street is inadequate as it is a 4/5 bed house and not a three bed house.
- That part of the justification for the development appears to be that it would open up options for development to the rear of Nos. 105 and 106 however the owners of these properties have not indicated that this is agreed to and it would not appear to be feasible. Development to the rear of Nos. 105 and

106 would also have a significant impact on the amenity of No.7 Ormonde Court the owner of which is one of the observers.

- That the suggestion in the Peter Thompson Planning regarding development to the rear of Nos. 105 and 106 being at the same building line as the proposed development would appear impossible to achieve.
- That the conservation officer report notes unauthorised works at No.103 which are not referenced in the Architectural heritage Impact report submitted or the report of the senior executive planner on file.

6.4. Further Responses

The application was referred to the Heritage Council, The development applications unit of the Department of Culture, Heritage and the Gaeltacht, Failte Ireland, An Taisce and An Comhairle Ealaíonn. No responses to these referrals were received by the Board.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of the current appeal:

- Principle of Development
- Impact on Amenity
- Conservation Issues and Impact on ACA
- Traffic and Access
- Other Issues
- Appropriate Assessment

7.2. Principle of Development and Overall Layout

- 7.2.1. The appeal site is located on lands that are zoned Existing Residential under the provisions of the *Kilkenny City and Environs Development Plan, 2014-2020*. The stated objective for the zone is *'to protect provide and improve existing residential amenity'*. Residential use is consistent with this zoning objective and it is therefore considered that the principle of a new house in this location is acceptable in principle.
- 7.2.2. The basis of the reason for refusal issued by the Planning Authority relates to the single nature of the proposed development in a garden of a terrace of houses and concerns that the proposed development would result in backland development that would be haphazard and uncoordinated and which would be prejudicial to the overall proper planning and sustainable development of the area. The first party appeal contends that as the proposed development meets all relevant residential development standards regarding layout and separation from other properties, it would act to bring underutilised backland areas into use and would facilitate the future development of similar areas to the rear of Nos. 105 and 106. It is also contended by the first party that with the exception of the rear areas to Nos. 105/106, there are no other significant redevelopment opportunities in the vicinity and such that it is not therefore clear how the proposal is piecemeal and uncoordinated and that the proposed infill form of development is consistent with the Guidelines for Planning Authorities on Sustainable Residential development in Urban Areas.
- 7.2.3. The principle of infill development is supported by the development plan (paragraph 11.8.9) and by the Sustainable Residential Development Guidelines, however the proposed development is a single residential unit on an individual site that is part of a larger backland area comprising the appeal site and the sites to the rear of Nos 105 and 106 Patrick Street. The site is also located such that it is adjacent to the currently undeveloped Ormonde Hotel car park that is located to the immediate south west. I note the comments of the first party that the form of development proposed could be extended to provide for similar developments to the rear of Nos. 105 and 106, however the feasibility of such a layout has to be questioned given the proximity of the three storey office development at Nos. 4-9 Ormonde Court to the north west. Overall, a more coordinated and denser form of development is considered possible on the overall backland site of which the appeal site forms part

and the development of a single residential unit would not in my opinion constitute an efficient use of this city centre backland site and is of a form that would constitute a haphazard and uncoordinated form of development. On balance therefore, I would agree with the assessment of the planning authority that it is appropriate that permission would be refused on this basis.

7.3. Impact on Amenity

- 7.3.1. The proposed development is located such that it would be separated from the rear of the existing dwelling at No.103 by c.22 metres and from the rear of the house at No.105 by c.18.5 metres. The design of what is the rear elevation of the proposed house which faces Nos.103-106 Patrick Street is such that there are no windows above ground floor level and no significant issues of overlooking or loss of amenity in this direction are considered likely to arise. To the south west, the front elevation of the proposed dwelling would overlook the curtilage of the office / commercial building to the west at Nos.8 and 9 Ormonde Road and the detached office building located to the south of Nos. 8 and 9. Given the uses of these buildings and the separation distances to the proposed development it is not considered that a loss of amenity by virtue of overlooking would arise. The side elevations of the proposed design are such that there are not proposed to be any windows at either ground or first floor levels. No issues of overlooking of adjoining properties and sites to the north west and south east therefore arise.
- 7.3.2. The relationship of the proposed development with the adjoining residential apartment development immediately to the south of the proposed dwelling and located to the rear of No.101 Patrick Street is in my opinion of note. In particular, the proposed dwelling on the appeal site is proposed to immediately adjoin and overlap with this apartment development and such that accommodation facing south west in this adjoining apartment block would have the side gable of the proposed dwelling extending along the boundary for a distance of c.10 metres. For the units immediately adjoining the boundary, and particularly those located at ground and first floor level of this three storey development, the proposed development would in my opinion have a significant negative impact on residential amenity by virtue of

overbearing visual impact and loss of aspect such as to seriously injure the residential amenity of these adjoining apartment units.

7.3.3. The layout of the proposed dwelling is considered to be acceptable in terms of room sizes and layout. The layout of the site with regard to private amenity space is such that an area of c.50 sq. metres is proposed to be retained to the rear (south west) of the proposed dwelling and such that it is enclosed by the site boundary walls and generally screened from surrounding sites and properties. The 50 sq metres open space proposed is consistent with the requirement for a minimum of 48 sq. metres of private amenity space for one and two bed units as specified at Table 11.5 of the *Kilkenny City and Environs Development Plan, 2014-2020* however it should be noted that the scale of dwelling proposed at c.135 sq. metres is large for a two bedroom house. As noted by the observers to the appeal, the extent of private amenity space proposed to be retained with No.103 Patrick Street to serve the residential use of this building is 60 sq. metres. This extent of open space is appropriate for a three bedroom house, however the scale of the residential accommodation at No.103, while not indicated on the submitted plans or application documentation, would appear to be larger than a three bedroom unit and therefore such that additional private amenity space should be provided.

7.3.4. Provision within the site for bin and bike storage is indicated on the submitted plans. The form of this area is not detailed, and I note the proximity to the rear of the adjoining property at No.105 Patrick Street which would not be appropriate particularly for an open bin storage area. I also note that the Proposed Site Layout Plan indicates repair works and slight raising of boundary walls to the existing shared boundaries with the adjoining properties at Nos.104 and 105 Patrick Street. Consent to such works would be required from the owners of these properties. .

7.4. **Conservation Issues and Impact on ACA**

7.4.1. I note the provisions of 11.8.9 of the Development Plan regarding infill development and PSACA6 relating to the Patrick Street ACA which states that that one of the development management standards for new development within this ACA such as the appeal site should '*avoid backland development which would negatively impact on the character of this area*'. The scale of development proposed in terms of

building footprint and height is not very significant, however as set out at 7.2 above I have concerns regarding the haphazard nature of the proposed development and the impact that the precedent created by a grant of permission would have on the overall development of these backlands and such that there would be a potentially negative impact on the character of the ACA contrary to Objective PSACA6 of the Plan.

- 7.4.2. I note the fact that the existing building at No.103 Patrick Street is included on the National Inventory of Architectural Heritage (NIAH) as are the buildings at Nos. 105 and 107. No.103 is not included on the Record of Protected Structures (RPS) however the inclusion on the NIAH as a building of regional significance means that there is an onus on the Planning Authority to consider it for inclusion on the RPS.
- 7.4.3. The relationship between No.103 and its curtilage would be altered significantly with the proposed development, however there would be a significant separation provided between the rear of the existing building at No.103 and the proposed development (in excess of 22 metres) and the scale and design of the proposed development is such that it would not in my opinion have a significant negative impact on the context or setting of No.103. As noted in 7.3 above, I have concerns with regard to the extent of private open space proposed to be retained with No.103 and therefore the extent of curtilage which would be retained with No.103 however On balance and having regard to the fact that it is not included on the RPS, I do not consider that the proposed development would be such as to have a significant negative impact on the character or setting of No.103 Patrick Street or other buildings in the vicinity that are included on the NIAH.
- 7.4.4. I note reference in the report of the local authority Conservation Officer on file regarding the undertaking of works to the windows in the front elevation of No.103. These works are not considered to be of direct relevance to the assessment of the subject appeal.

7.5. Traffic and Access

- 7.5.1. Access to the proposed development is indicated as being provided via the existing access from Patrick Street that is located on the northern side of the street frontage and which provides access via an existing archway in No.103 Patrick Street. This access is c.2.6 metres in width and it would therefore be feasible for a car to access via this route.
- 7.5.2. The application details state that no vehicular access via the existing entrance onto Patrick Street is proposed and that access to the site via this route would be for pedestrians and cyclists only. This is noted and the provision of a residential development with no dedicated car parking provision is considered to be acceptable in principle given the city centre location of the site. I note however that the layout within the site indicates a paved path or driveway extending into the site. This would appear too restricted to allow access for a car however given the very restricted visibility at the site entrance onto Patrick Street and the blind access onto the footpath additional vehicular access to the site via the existing entrance generated by the proposed development would be inappropriate and such as would lead to the creation of a traffic hazard. In the event of a grant of permission it is therefore recommended that a condition specifically restricting access to Patrick Street to pedestrian and cycle traffic only would be attached.

7.6. Other Issues

- 7.6.1. The development is proposed to be connected to the public water supply and foul drainage network. The comments of Irish Water on file are noted, in particular the fact that while the application form states that the site is served by existing foul and water supply connections, the Proposed Site Layout Plan drawing indicates new connections. The submission from Irish Water recommends further information be requested to clarify this issue however there is no indication that there is an objection to the principle of a new connection and in the event that the Board is considering a grant of permission it is considered appropriate that this issue would be addressed by way of condition.

7.6.2. In the event of a grant of permission, a financial contribution in accordance with the provisions of the adopted development contribution scheme is appropriate. The initial recommendation of the Planning Officer on file indicates that a figure of €3,375 should be required.

7.6.3. I note the fact that the site is located within the zone of archaeological potential for Kilkenny City as identified in the development plan. In the event of a grant of permission it is therefore recommended that a condition would be attached requiring that pre construction archaeological testing would be undertaken and that construction works would be overseen by an archaeologist.

7.7. **Appropriate Assessment**

7.7.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations.

9.0 **Reasons and Considerations**

1. Having regard to the zoned serviced and city centre location of the site, to its location in the rear garden of an existing house that forms part of an existing terrace on the western side of Patrick Street, to the presence of other backland sites to the north west and to the relationship of the site to surrounding buildings and lands, it is considered that the proposed development would represent an inefficient use of zoned and serviced city centre lands and a haphazard and uncoordinated form of backland development that would compromise the future comprehensive development of these backland areas and be contrary to the designation of the site as an Architectural Conservation Area (ACA). The proposed development would therefore be contrary to

Objective PSACA6 of the Kilkenny City and Environs Development Plan, 2014-2020 as it relates to the Patrick Street ACA and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the proposed development on the site and its relationship with the adjoining apartment development to the south east located to the rear of No.101 Patrick Street, and specifically to the extent of blank gable elevation that would face these apartment units, it is considered that the proposed development would have a negative impact on the residential amenity of occupants of these apartments by virtue of overbearing visual impact and loss of aspect. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

4th February, 2020