



An
Bord
Pleanála

Inspector's Report

ABP-305599-19

Development	Construct extension to side of house and to side of garage.
Location	Abbeyville, Limerick Road, Clonroadmore, Ennis, Co. Clare.
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	19610
Applicant(s)	Neil Coffey.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	John Melican
Observer(s)	None
Date of Site Inspection	31 st January 2019.
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The subject site is located in Abbeyville, Limerick Road, Ennis within the settlement of Ennis town. The site is a backland site located to north of the Abbeyville Housing Estate. The site is accessed from both Tobartescain Road and the Abbeyville Estate.
- 1.2. There is an existing dormer style dwelling and associated sheds on the site.
- 1.3. The area is characterised to the by detached dwellings to the north of the site with access from Tobartescain Road and the housing estate of Abbeyville to the south.

2.0 Proposed Development

- 2.1. The development comprises:
 - The construction of an extension to side of the house and side of garage.
- 2.1.1. The proposed extension is single storey annex to the side of the dwelling finished in timber cladding with a floor area of approx. 20sqm. The floor area of the proposed garage extension is approx. 22sqm, finished to match the existing garage.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant planning permission subject to six conditions. The following are considered of relevance:

Condition no. 3 relates to use of the garage for purposes incidental to the enjoyment of the dwelling only

Condition no. 4 relates to the use of the dwelling as a single residential unit.

Condition no. 5 relates to external finishes.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

The report of the Planning Officer reflects the decision of the planning authority. The Planning Officer notes the zoning objectives for the area and the planning history of the site. It is set out that the concern of the third party regarding legal interest is not a matter for the planning system. It is set out that Reg. Ref. 06/20122 provided for a vehicular access form Abbeyville housing estate. The works are acceptable in principle subject to conditions.

3.2.2. **Other Technical Reports**

None

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

One submission was made in relation to the development. A brief summary of the issues raised in the submission to the Planning Authority are set out below:

- Deficiencies and discrepancies in the planning application lodged, in particular the drawings.
- Concerns expressed regarding the use of and the requirement for the garage extension.
- Planning permission is required for the vehicular access form Abbeyville housing estate.
- Use of commercial bins in the front garden has created an environmental
Planning History

4.0 **Planning History**

Site

Reg. Ref. 10/21013 - Planning permission granted to change the use of shed granted under 08/21149 to bicycle workshop in connection with a bicycle hire business.

Reg. Ref. 08/21149 - Planning permission granted to change the use of garage granted under 06/20122 to living/children playroom and construct three sheds.

Reg. Ref. 06/20122 – Planning permission granted to construct a dwelling house.
This permission expired on 20/06/2011.

Condition no. 2

The vehicular link between the existing property to the north and the proposed development shall be temporary only and shall be eliminated within 6 months of the Abbeyville development being taken in charge.

Reason: In the interest of orderly development.

Condition no. 3

A new vehicular access shall be provided off the turning area to the southeast in the Abbeyville development within 6 months of the Abbeyville development being taken into public charge. The existing boundary between the site and the turning area shall be relocated to accommodate the entrance. Details of development of this new vehicular access shall be subject to the Council's approval before implementation.

Reason: In the interest of traffic Safety and orderly development.

5.0 Policy Context

5.1. Development Plan

Clare County Development Plan 2017-2023 incorporating the Ennis Municipal District Written Statement and Settlement Plans

The site is zoned *Existing Residential* in the Clare County Development Plan.

Existing Residential

The objective for land zoned 'existing residential' is to conserve and enhance the quality and character of the areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities. Existing residential zoned land may also provide for small-scale home-based employment uses where the primary residential use will be maintained.

5.2. Natural Heritage Designations

The site is not located within or directly adjacent to any Natura 2000 sites. The site is located 0.45km west of the Lower River Shannon SAC (Site code 002165)

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- It is set out that vehicular access to the Abbeyville Housing estates does not have planning permission and as per condition no. 2 and no. 3 of the grant of planning permission Reg. Ref. 06/20122 (Ennis Town Council). Condition no. 2 referred to a temporary vehicular access via the existing property to the north. Condition no. 3 referred to a new vehicular off the turning area to the southeast via the Abbeyville development to be provided within 6 months of development being taken in charge.
- It is set out that a number of subsequent planning applications were made on the site Reg. Ref. 08/21149 and Reg. Ref. 10/21013 whereby access arrangements to the development was show via the access to the north onto Tobartescain Road and not via Abbeyville.
- It is set out that the applicant never applied for access via Abbeyville, but it was the Council who decided that access should be via Abbeyville. The public were not informed. It is set out that the approach is ultra vires of the Planning Act and contrary to the Developemt Management Guidelines (2007).
- The appellant was not aware of any issue with respect to an entrance from the site onto Abbeyville until May 2019 when the applicant started to form an access to the site. it is set out that the appellant contacted the planning

authority in this respect before details were agreed with the planning authority under condition on. 3 of 06/20122.

- It is set out that the applicant does not have sufficient interest to access onto Abbeyville estate. The taking in charge of the estate by the Council did not include the boundary walls. It is set out that the appellant has set out sufficient evidence regarding the wall to merit further investigation as in this case the appellant states he built the wall.
- It is set out that the drawings are incomplete and inaccurate including site layout and site location drawings, floor plans, location of skylight and the position of the adjoining garage.
- It is set out that the scale of the development will have a negative impact on the residential amenity of the existing house.
- Concern is expressed regarding how car parking and turning areas are to be accommodated without blocking the cul de sac.

6.2. Applicant Response

The applicant did not respond to the ground of appeal.

6.3. Planning Authority Response

The planning authority's submission dated 4th November 2019 sets out that the third-party issues were adequately address in the Planner's Report.

7.0 Assessment

7.1.1. The main issues in this appeal are those raised in the grounds of appeal. The issue of appropriate assessment also needs to be addressed. I consider the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Planning History
- Other Matters
- Appropriate Assessment

7.1.2. The site is located within an area zoned *Existing Residential* which seeks "to conserve and enhance the quality and character of the areas, to protect residential

amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the immediate area and uses that enhance existing residential communities”, Residential is a permissible use within this zoning category. Therefore, the principle of a domestic extension and a domestic garage extension is acceptable on lands zoned ‘existing residential’, subject to safeguards. In this regard, I consider the modest scale of the extension and domestic garage acceptable in this context. I further note that a significant amount of private amenity space will remain following the works and the site can adequately accommodate vehicular parking and associated turning movements.

7.2. Planning History

- 7.2.1. The third-party appellant has raised a number of concerns with respect to the vehicular access to the site from the Abbeyville Housing estate. It is argued that the applicant does not have planning permission for an entrance at this location as per condition no. 2 and no. 3 of the grant of planning permission Reg. Ref. 06/20122 (Ennis Town Council). Condition no. 2 referred to a temporary vehicular access via the existing property to the north. Condition no. 3 referred to a new vehicular off the turning area to the southeast via the Abbeyville development to be provided within 6 months of development being taken in charge.
- 7.2.2. It is argued that a number of subsequent planning applications were made on the site Reg. Ref. 08/21149 and Reg. Ref. 10/21013 whereby access arrangements to the appeal site were identified via the access to the north onto Tobartescain Road and not via Abbeyville. It is set out that the applicant never applied for access via Abbeyville, but it was the Council who decided that access should be via Abbeyville. The public were not informed and accordingly the approach is ultra vires of the Planning Act and contrary to the Developemt Management Guidelines (2007).
- 7.2.3. The appellant sets out that he was not aware of any issue with respect to an entrance from the site onto Abbeyville until May 2019 when the applicant started to form an access to the site. The planning authority in their assessment argue that the vehicular entrance is in compliance with condition no. 3 of Reg. Ref. 06/20122 following post compliance submission received by the planning authority of 7th June 2019 seeking consent for the vehicular access in accordance with Reg. Ref. 06/20122.

- 7.2.4. In this regard, planning permission was granted for Reg. Ref. 06/20122 on 23/06/2006. This permission expired on 20/06/2011. As per the information on file no works had commenced on the vehicular access prior to expiration of this planning permission. Furthermore, as stated I note that the applicant has made a number of subsequent planning applications relating to the appeal site indicating access to the north via Tobartescain Road. Notwithstanding the letter issued by the planning authority on 13th June 2019, I consider the vehicular access constitutes unauthorised development. The works were not carried out within the lifetime of the planning permission as per Section 40 of the Planning and Development Act 2000 (as amended). It is also unclear from the documentation on file when the Abbeyville estate was taken in charge, but it would appear that it has been in charge for some time,
- 7.2.5. On the basis of the information in file, I consider the proposed development relates to a site which is subject to unauthorised development and the proposed development would facilitate the consolidation and intensification of this unauthorised use. Permission should be refused for this reason.

7.3. **Other Matters**

Legal Interest

- 7.3.1. The appellant argues that the applicant does not have sufficient interest to access onto Abbeyville estate as the taking in charge of the estate by the Council did not include the boundary walls.
- 7.3.2. Further to the above, I agree with the assessment of the planning authority that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Should planning permission be granted, and should the appellants or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.

Discrepancies in the Drawings Submitted.

7.3.3. The appellant argues that the drawings are incomplete and inaccurate including the site layout plan and site location map, floor plans, location of skylight and the position of the adjoining garage. Whilst, I note a number of minor discrepancies in the drawings submitted, I am satisfied that they are of an adequate standard to assess the application.

7.4. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance to the nearest European site, 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 the conservation objectives of any European site

8.0 **Recommendation**

I recommend that permission be refused for the reasons stated in the attached schedule.

9.0 **Reasons and Considerations**

On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a site which is the subject of unauthorised development in the form of a vehicular access and that the proposed development would facilitate the consolidation and intensification of this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.

Irené McCormack

Planning Inspector

3rd February 2020