



An
Bord
Pleanála

Inspector's Report

ABP-306221-19

Development

Retention for change of use from domestic garage (25sqm exempt development), to a bedroom, bathroom and hall also retention permission for a single storey extension 23.8sqm (kitchen/dining/living) to the front and permission to construct a single storey extension to the side (bedroom, hall) with subdivision of site with all associated site works. Revised by significant further information consisting of: retention permission for a one bedroom dwelling (48.8 sqm) and permission for single storey extension (12.3sqm) to side all in rear garden with subdivision of site.

Location

513 Fair Green Road, Kildare Town,
Co. Kildare, R51 VY73

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

19/245

Applicant

John Walshe Snr.

Type of Application	Permission for Retention and Permission
Planning Authority Decision	Grant Permission for Retention and Permission
Type of Appeal	Third Party v Grant of Permission for Retention and Permission
Appellant	Kathleen Foley
Date of Site Inspection	20.03.2020
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located on Fair Green Road, north of Kildare town centre and immediately south of the train station car park.
- 1.2. The site and structure are to the rear/south of No. 513; a single-storey semi-detached house externally finished in dash. Vehicular access is to side of this house. The house subject of the appeal is a detached single-storey, unpainted, house approx. 31 metres to the rear of No. 513. The area to the rear of the house is surfaced in gravel/stone with a small grassed area and a patio to the west side. There is a car parking area to the front and there is a detached garage also within the proposed curtilage. There is a block wall to the rear of the house, a hedgerow to the west/side boundary, a timber fence to the east/side boundary with no substantial boundary between the house and the original house on site.
- 1.3. The site has an area of 0.045 hectares.

2.0 Proposed Development

- 2.1. Planning permission was sought for:
 - Retention permission for a change of use from a 25sqm domestic garage (exempted development) to a bedroom, bathroom and hall;
 - Retention permission for a 23.8sqm single-storey extension to the front,
 - Permission to construct a single-storey extension to the side,
 - Subdivision of the site and all associated site works.
- 2.2. The existing building has a stated floor area of 48.8sqm. The structure has a maximum indicated height of 4.2 metres.
- 2.3. Further information was submitted in relation to, inter alia, a revised proposed extension area, clarification of private open space areas and the application was re-advertised as significant further information for the retention of a one-bedroom house and permission for a 12.3sqm single-storey extension with subdivision of the site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 14 no. conditions of a standard nature, including conditions relating to external finishes, landscaping, construction practices, surface water discharge, Irish Water connection, the maintenance of a foul sewer wayleave and development contributions.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 02.05.2019 and 02.12.2019 were the basis for the decision. The Planning Officer concluded that, having assessed the internal reports of the planning authority and the policies of both the Kildare County Development Plan 2017-2023 and the Kildare Town Local Area Plan 2012-2018, it was considered reasonable to permit the development.

3.2.2. Other Technical Reports

Area Engineer – No objection subject to conditions.

Roads, Transportation and Public Safety Dept. – No objection subject to conditions.

Water Services – No objection subject to conditions.

Environment Section – No objection subject to conditions.

3.3. Prescribed Bodies

Irish Water – No objection subject to conditions.

3.4. Third Party Observations

- 3.4.1. 1 no. submission was received on the original planning application from Kathleen Foley, 8 Elm Park, Kildare. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- It is not the conversion of a garage; it is a purpose-built house.
- No objection would have been made if it was a little further back.

3.4.2. A subsequent submission was also received from Kathleen Foley following the publication of revised statutory notices which related to a revised development description. The issues raised are largely covered by the grounds of appeal with the exception of the following:

- Mrs. Foley was able to observe the construction from digging of foundations to completion.
- Clarity is sought on how an application can be submitted for an extension to an unauthorised development currently under review.

4.0 Planning History

4.1.1. There has been no previous relevant planning application on site.

4.1.2. A Certificate of Exemption from Part V was granted under S97C/2019/00006.

4.1.3. Enforcement file UD 7120 relates to an unauthorised detached one-bedroom house in the rear garden of No. 513 Fair Green, Station Road, Kildare.

5.0 Policy Context

5.1. Kildare County Development Plan 2017-2023

5.1.1. Chapter 4 (Housing) is relevant, in particular Section 4.11 (Residential Development in Established Urban Areas – Infill, Backland, Subdivision of Sites and Corner Sites). This states the development of underutilised infill and backland sites in existing residential areas is generally encouraged.

5.1.2. Chapter 17 (Development Management Standards) is also relevant.

5.2. Kildare Town Local Area Plan 2012-2018

5.2.1. This Plan remains the plan in place for Kildare town. The site is in an area zoned 'Objective B; Existing Residential'. The zoning objective is to protect and improve existing residential amenity, to provide for appropriate infill residential development

and to provide for new and improved ancillary services. Table 15 (Land Use Zoning Matrix) indicates that residential development in Objective B zoned land is permitted in principle.

- 5.2.2. Chapter 7 states, inter alia, that development management standards set out in the Kildare County Development Plan (2011-2017) will also apply to development within the LAP boundary. Section 7.2 (Housing) of the Plan is relevant.

5.3. Natural Heritage Designations

- 5.3.1. The closest Natura 2000 site is Pollardstown Fen SAC approx. 4.6km to the north east. The closest area of natural heritage designation is Curragh pNHA approx. 1.3km to the east.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the development and the nature of the receiving environment, which is a fully serviced urban location, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. 1 no. third party appeal was received from Kathleen Foley, 8 Elm Park, Kildare; the property adjacent to the rear/south of the site. The main issues raised can be summarised as follows:

- The unauthorised dwelling and extension is too near to the appellant's property and the appellant was denied the opportunity to make a submission.
- The applicant works with Kildare Co. Co. submitting planning applications. The applicant was also refused permission for a similar development two doors

away, so he fully understands the process and this unauthorised build is a flagrant disregard of the planning process.

- The statement that the dwelling was the conversion of a domestic garage is not a fact. Ordnance Survey photos shows how the build evolved despite the applicant's statement that he could not prove how the dwelling evolved. The appellant considers the structure is closer than 10.5 metres to her boundary but has no way of proving this.
- The appellant was precluded from viewing part of the file on the grounds that it was private information. The information forms part of the submission enabling the planning authority to make its decision. How does the appellant know this information is factual?
- The appellant feels undermined by the debacle and the process does not appear to be transparent. The applicant was permitted to submit an application for an extension to an unauthorised dwelling which was under review. The appellant states the close association between the applicant and Council brings into question the attitude to, and the opinion of, the applicant to the planning authority.

6.2. Applicant's Response

6.2.1. The main points made can be summarised as follows:

- The appellant states she was denied the opportunity to make a submission when in fact two letters of objection were lodged.
- The applicant has never worked for the Council and has never had any collusion with any official and the applicant takes exception to the assertion.
- All requests for further information have been complied with.
- The applicant is not a developer and lives in the house.
- Two applications have been granted in the vicinity; P.A. Reg. Ref. 19/954 (23 Fair Green) and P.A. Reg. Ref. 18/1187 (Dunmurry Rise).

6.3. **Planning Authority Response**

6.3.1. The response can be summarised as follows:

- In assessing the application due regard was given to the relevant policies and standards outlined in the County Development Plan 2017-2023, the Kildare Town Local Area Plan 2012-2018, the planning history of the site, internal reports, reports of the prescribed bodies, the third-party submission and the proper planning and sustainable development of the area. Having reviewed the grounds of appeal the planning authority has no further comment or observation to make. The Council requests the Board to uphold the decision to grant permission.

7.0 **Assessment**

The main issues are those raised in the grounds of appeal and in the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of the Development
- Residential Amenity
- Impact on Adjacent Residential Amenity
- Appropriate Assessment
- Other Matters

7.1. **Principle of the Development**

7.1.1. The site is in an area zoned 'Objective B' in the Kildare Town LAP where the zoning objective provides for, inter alia, appropriate residential infill development. The primary aim of the zoning objective includes providing for further infill residential development at a density that is considered suitable to the area and to the needs of the population. Residential development is permitted in principle under the zoning matrix.

- 7.1.2. The site is a backland site to the rear of the existing single-storey house which addresses Fair Green Road. Table 4.1 (Locations Appropriate for New Residential Development) of the County Development Plan 2017-2023 states that additional dwellings within the inner suburban areas of towns can be provided by, inter alia, backland development. Backland development is referenced throughout Section 4.11 (Residential Development in Established Urban Areas – Infill, Backland, Subdivision of Sites and Corner Sites) of the Plan, including that the development of underutilised backland sites in existing residential areas is generally encouraged, though it also states that a balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill.
- 7.1.3. As the County Development Plan 2017-2023 refers to backland development as an appropriate location for residential development I consider that, in principle, the site is acceptable.

7.2. Residential Amenity for Occupants

- 7.2.1. During the planning application process with the planning authority the development description was altered to comprise permission for retention of a one-bedroom house and permission for an extension.
- 7.2.2. The existing house has a stated floor area of 48.8sqm with the proposed extension having a floor area of 12.3sqm; giving an overall proposed floor area of 61.1sqm. Chapter 17 (Development Management Standards) of the Kildare County Development Plan 2017-2023 requires a minimum of 55sqm for a one-bedroom house (Table 17.4 – Minimum Floor Area and Storage Requirements for Dwelling Houses). The Quality Housing for Sustainable Communities Guidelines, 2007, (Table 5.1 – Space provision and room sizes for typical dwellings) cites an area of 44sqm for a single-storey one-bedroom house.
- 7.2.3. Table 17.5 (Minimum Private Open Space Requirements for Dwelling Houses) of the County Development Plan 2017-2023 requires 48sqm for a one-bedroom house. The further information response states that a private open space area of 407.18sqm, to the front, rear and side, is provided. On foot of a site inspection it is unclear whether this area of private open space is actually provided. Notwithstanding, I consider that there is adequate private open space associated with the house. Adequate space for

2 no. car parking spaces within the house curtilage is also provided. There was one car parked on site which was in front of the house and it is unclear whether there is adequate space between the house and garage to accommodate two cars in the positions as set out on the site layout plan. However, I consider that there is adequate car parking space provided on site.

7.2.4. I consider that the development results in adequate residential amenity for occupants in terms of house size, private open space provision and car parking.

7.3. Impact on Adjacent Residential Amenity

7.3.1. The grounds of appeal state that the house is too close to the appellant's property.

7.3.2. There are no specific distances to determine whether a development is or is not too close to a neighbouring property and each application should be dealt with on its own merits. The site layout plan states that a 10.5 metres separation distance is provided between the rear wall of the house and the boundary with No. 8 Elm Park; a distance the appellant does not consider is accurate. On inspection I measured the separation distance as approx. 5.5 metres. Notwithstanding, I do not consider that the approx. 5.5 metres distance has any adverse impact on the residential amenity of the property to the rear, or to either side, in terms of overlooking, shadowing or overbearing impact. The proposed extension will not have any issue in these respects either. The house is set back inside the eastern side boundary and there are no above ground floor windows provided. The window along the eastern boundary has opaque glazing and serves a shower room.

7.3.3. The number of bedrooms in the house to the front, which is owned and occupied by the applicant's son and daughter-in-law, is unknown. Table 17.5 of the County Development Plan 2017-2023 states that four or more-bedroom houses should have a minimum 75sqm private open space. The further information response states that a private open space area of 357.65sqm is retained by the house to the front. This includes an area to the rear of 210sqm. Notwithstanding that this appears to include the right-of-way area to the house subject of the appeal, I consider that sufficient private open space is retained by the original house on site.

7.3.4. Having regard to the foregoing, I consider that the structure does not have any undue adverse impact on the residential amenity of adjoining properties, or on the original house on site, and the proposed extension will not have any significant impact.

7.4. Appropriate Assessment

7.4.1. Having regard to the nature and scale of the development and to the nature of the receiving environment, namely an urban and fully serviced location remote from and with no hydrological pathway to any European site, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.5. Other Matters

7.5.1. Other matters raised in the grounds of appeal can be addressed as follows:

- The grounds of appeal state the appellant was denied the opportunity to make a submission. However, I note that submissions were received by the planning authority from the appellant on both the original application and on foot of the re-advertised public notices.
- I concur with the assertion that the house is closer to the boundary than shown on the site layout plan. However, as set out above, I do not consider this to have any undue adverse impact on the residential amenity of the appellant's property. Notwithstanding, I consider that a revised site layout plan should be submitted for the written approval of the planning authority to ensure clarity of documentation in this regard.
- Validation of a planning application, access to documentation during the planning process with the local authority and other issues set out are not issues for the Board.

8.0 Recommendation

I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Kildare County Development Plan 2017-2023 and the Kildare Town Local Area Plan 2012-2018, and the nature and scale of the development in an established residential area in an urban centre, it is considered that, subject to compliance with the conditions set out below, the development would be acceptable in terms of the residential amenity for occupants and would not seriously injure the residential amenities of property in the vicinity. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and 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 29.10.2019 and 06.11.2019 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 and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Within 8 weeks of the grant of this permission a revised site layout plan accurately setting out the position of the house on site shall be submitted for the written approval of the planning authority.

Reason: In the interest of clarity.

3. Within 8 weeks of the grant of this permission details of the materials, colours and textures of external finishes shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of visual amenity.

4. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. Within 8 weeks of the date of grant of this permission, the applicant or developer shall enter into a water and/or waste water connection agreement(s) with Irish Water.

Reason: In the interest of public health.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Anthony Kelly

Planning Inspector

27.03.2020