



Development

(a) Retention permission to retain the internal subdivision of the dwelling into two separate dwellings (bungalow and cottage) and therefore to remove Condition No. 6 included on the grant of permission under PI. Ref 1352/83 and also to retain the separating boundaries within the property of each dwelling. (b) Retention permission for the conversion of the first floor of the bungalow to habitable accommodation, internal and external alterations. (c) Permission for change of use of the existing garage to a playroom with lobby linkage to the bungalow. (d) Permission for the building up of the existing pedestrian and vehicular entrances to the bungalow, raising of the front boundary wall to 1.5m high and construction of a new relocated splayed gated entrance to the property from the R-403 public road

Location	218,Bawnogues Green's Cross,New Road, Straffan,Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2023
Applicant(s)	Richard Mair and Gary Doherty
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Richard Mair and Gary Doherty
Observer(s)	None
Date of Site Inspection	31 st of July 2020.
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. There are two main roads into Straffan village from the north (Dublin side). One is via the Barberstown Castle road, and the other is the New Road & Bawnoges access road which is off the R403. The New Road is essentially aligned with residential developments, including estates and one-off houses. The general area where the site is located is fully serviced. Given the level of development to the south and west of the site, collectively known as Straffan, the locality appears to be more suburban than rural in character.
- 1.2. The subject site, 0.1735Ha, and is located off the junction of the New Road with the R403. The site contains an old cottage which addresses and is accessed off New Road. The cottage is 63sq.m. and has its own front and side curtilage. The rear of the cottage site includes a semidetached dormer bungalow (165sq.m.) with a detached garage (63sq.m.) and access off the R403, and a yard area further west along the R403. The overall site is a long narrow site which was originally a cottage plot. According to the planning file the dormer bungalow element was an added extension during the 1980s, and both units were subsequently subdivided into two separate dwelling units. It is unclear when the subdivision occurred, but it has existed since 2007 when the property was purchased by the applicants.
- 1.3. The access to the bungalow from the R403 Regional Road is located within the 80kph speed limit.

2.0 Proposed Development

- 2.1. There are two elements to the development, retention of works, and a permission to carry out a change of use.
 - Retention permission to retain the subdivision for the dwelling into two separate dwellings (cottage (63sq.m.) and dormer bungalow (163sq.m))
 - Remove Condition No. 6 of planning reference 1352/83 and to retain separating boundaries
 - Retention of conversion of attic space in the bungalow to habitable accommodation

- Permission to change the use of the garage to a playroom which is to include the construction of a lobby link to the bungalow.
- Permission to build up existing pedestrian gate and vehicular access off the R403 to the dormer bungalow, raise the front boundary wall to 1.5metre and provide a new entrance off the R403 to the bungalow with carparking area.

3.0 Planning Authority Decision

3.1. Decision

Kildare Co. Co. **REFUSED** the proposed development for 2 reasons.

1. The applicant should and did not demonstrate compliance with Policy RH 2 of the development plan regarding local need criteria.
2. Section 4.11 (Residential Development in Established Urban Areas) states that subdivision of dwellings must comply with certain criteria, and the development would set an undesirable precedent, and it is considered to be a haphazard, piecemeal development which is out of character with the area and would materially contravene policies RH9 and RH 10 of the Kildare County Development Plan 2017-2023.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The key points of the assessment are as follows:

- The site is located in a rural area, and rural housing policies apply. There have been no details of local needs compliance submitted with the planning application. The proposal contravenes Policy RH2.
- Section 4.11 of the CDP is cited, stating subdivision of dwellings is only considered with large dwellings on large sites within established urban areas.
- The area has a high level of one-off dwellings and the development if granted would represent piecemeal, haphazard development.
- Refusal recommended.

3.2.2. **Other Technical Reports**

Roads – No objection

Chief Fire Officer – No objection

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

None

4.0 **Planning History**

83/1352

P. Brady sought and received planning permission for the construction of a dormer bungalow incorporating existing cottage and garage, septic tank and alterations to existing entrance.

Condition No. 6

Applicant to enter into agreement with Kildare Co.Co. under Section 38 limiting the use of the proposed dormer dwelling and cottage to use as a single dwelling.

96/1031

P. Brady sought permission to retain dormer garage/ workshop/ store, to retain office extension to garage and to retain builders' yard with covered open storage.

Permission was granted with conditions.

19/561

Richard Mair and Gary Doherty sought permission for internal detachment of the property described under Planning Reference 96/1031 as a 'dormer garage' from the cottage. Application Invalid.

19/1405

Richard Mair and Gary Doherty sought permission retention of cottage and bungalow as separate dwellings as granted under planning reference 1352/83, and to remove Condition No. 6. Permission for retention of attic conversion for habitable use. Application Invalid.

Enforcement Cases

UD4854 and UD6483 – Unauthorized Businesses associated with the garage and yard.

5.0 Policy Context

5.1. Development Plan

Kildare County Development Plan 2017-2023 Volume 1

Chapter 4 - Housing

RH14 Only consider family members for backland development. The proposed development shall have no negative impact on third parties/ neighbouring property owners and viable sites with sufficient independent percolation areas will be required in order to meet technical guidelines. Sufficient screening will be required to screen the house from adjacent homes and this has to be in place prior to occupation of the house. Only single storey bungalow (including attic accommodation) type houses will be allowed in such backland locations to limit visual impact and overlooking.

Chapter 17 – Development Management Standards

Section 17.4.8 Extensions to Dwellings

- The extension should be sensitive to the existing dwellings in its form, scale and appearance and should not adversely distort the scale or mass of the structure or adjoining properties.
- An extension should complement the area in which it is located, and its design and scale should have regard to adjoining properties.
- The extension should not provide for new overlooking of the private area of an adjacent residence where no such overlooking previously existed.

5.2. **Natural Heritage Designations**

There are no Natura 2000 sites within 15Kms of the subject site.

5.3. **EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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 third-party appeal can be summarised as follows:

6.1.1 ***History***

The owners of the property only became aware recently that the planning authority's records did not contain the original grant of planning permission for the bungalow granted under reference 1352/83. This led to a misunderstanding that a retention planning application PL96/1031 was the current planning status of the property. Under the 1996 planning application the description of the entire development only referred to the cottage. There are in fact 2No. separate dwellings with separate access points, two front doors, two oils lines, two service points, two ESB accounts, etc. The properties are insured separately. The current occupants have been living there for over ten years.

6.1.2 ***Planning History***

In 2019 under Planning reference 19/561, it was sought to correct the description of the property as defined under 96/1031. The application was declared invalid. At that time the owners found the original planning permission, Planning Ref 1352/83 which is the parent permission for the bungalow/ extension to the rear of the cottage.

The current application, PL Ref 20/23 was sought to retain the cottage and bungalow with their boundaries and services as they have existed for 23years and to improve

the entrance/ exit safety and visual appearance of the property when viewed from the R403.

6.1.3 **Grounds**

- The current application / decision seeks to overturn Condition No. 6 of PL1352/83 and create two properties, and the word 'create' is a misnomer in that the properties have existed in configuration for 23 years.
- The applicant should not be the subject of the rural housing policy because no construction has taken place, they already exist. The planning status and sustainable development of the area is unaffected by retaining the occupancy of the residential property as it has existed since 1983.
- The development has existed for 23 years with no Enforcement from the planning authority.
- There have been a number of notices issued for the carrying on of unauthorised activities on site, (car repairs) involving occasional accumulation of cars on the public road near a busy junction.

The site layout indicates there will be a playroom linked to the dwelling house within a landscaped courtyard. Access to the courtyard would be for pedestrians only from a new parking area accessed from a gated entrance off the R-403.

- The general public's safety and visual amenity will be served by this application

6.2. **Planning Authority Response**

The Planner's Report on file should be referred to and the decision to refuse should be upheld.

7.0 Assessment

7.1 Introduction

The subject site is located north of Straffan village along the R403 which is the main Celbridge to Clane Road. The development is for the retention of two separate dwelling units on the site (0.175Ha) that were originally permitted as an extension to an old cottage in 1983. The old original cottage on the site is 63sq.m., and a semi-detached dormer bungalow to the rear of the cottage, is 165sq.m. Both dwellings have their own entrances, services connections, ESB accounts and are injured separately.

The parent planning permission relating to the subject site is 83/1352

P. Brady sought and received planning permission for the construction of a bungalow incorporating existing cottage and garage, septic tank and alterations to existing entrance.

Condition No. 6

Applicant to enter into agreement with Kildare Co.Co. under Section 38 limiting the use of the proposed dormer dwelling and cottage to use as a single dwelling.

7.2 This current application seeks to remove Condition No. 6, and to retain both properties as separate dwelling units. The appeal will be examined under the following headings:

- Is the local needs policy of the development plan applicable to this case?
- Compliance with development plan policy
- Roads/ traffic
- Other Issues
- Appropriate Assessment

7.3 Is the local needs policy of the development plan applicable to this case?

Kildare Co. Co. refused the development for two reasons. Reason No. 1 stated the applicant did not submit documentation demonstrating compliance with the local needs rural housing policy as set under RH2 of the current development plan. It is interesting that Reason No. 2 contradicts Reason No. 1 and describes the location of the subject site as an Established Urban Area. It is my opinion, the planning authority permitted a substantial extension to the cottage under planning reference 1352/83, and the property was the subject of another planning application in 1996. The rear dormer bungalow extension to the cottage has existed for over 23 years. The applicants purchased the property in 2007, and at the time and currently, the property included two separate dwelling units. Both houses are separately occupied, they have separate vehicular access points and boundary treatment. There are two service metres, phone lines and both properties have separate connections to the public sewer. I inspected the site, met both parties living in the separate houses, and it is apparent the dwellings have been separate units for a considerable period of time. One tenant has resided in the dormer bungalow for over ten years.

In my opinion, the planning authority has incorrectly considered the development as a one-off rural dwelling. It is in fact an extension to an existing cottage that was granted planning permission by the Planning Authority in 1983, and now the same planning authority is referring to the development in Reason No. 2 of the refusal as haphazard, piecemeal and out of character with the area. If one considers the application as the retention of a separate dwelling unit on the site, it would appear from the evidence on the appeal that, that the subdivision of the property into two separate dwelling units pre-dates the local needs development plan policy. i.e. it pre-dates the purchase of the property in 2007.

The general pattern of development in the area and along New Road, Straffan includes a considerable level of residential developments including a residential estate 500metres south of the subject site, and backland development of 3-4 dwellings served by a single cul de sac road off the R403 and New Road, and extensive residential developments to the west of the site along the R403. The immediate area and the subject site are serviced by a local bus route, and public mains/ and sewerage. Although it is not an urban area, the general area is more

suburban than rural in description. I do acknowledge there are large arable fields to the south of the site, however, it is a built up and serviced rural/ suburban fringe.

In my opinion, it seems a bit harsh to apply the local needs policy criteria to the subject development, and the subdivision of the property into two separate units is best examined under other relevant planning policy. I therefore advise the Board to dismiss Reason No. 1 of the planning authority's decision.

7.4 **Compliance with Development Plan Policy**

In my opinion the general area where the site is located is not an established urban area, therefore the policies cited by the planning authority from section 4.11 of the Development Plan in Reason No. 2 of the Refusal, are not relevant to the development. Furthermore, the planning authority states the development materially contravenes Policy RH9 and RH10, which contradicts the other section of the development plan referenced in Reason No. 2, Section 4.11, whereby the policies relate to both urban and rural areas. Consequently Reason No. 2 of the refusal cites policies that are not relevant to the current appeal/ planning application, and it should be dismissed by the Board, and the use of the terminology 'material contravention' is unreasonable and inappropriate in this instance.

The relevant development plan is ***Kildare County Development Plan 2017-2023***. The location is not within a designated settlement area, although it is a fully serviced area and as stated earlier in the report, the area is quite built up with residential developments. I consider the subject development to be a form of backland development as the extension was permitted and constructed onto the rear of an existing old cottage, and later the site was subdivided to create two separate dwellings. According to development plan policy **RH14 relating to backland development**, the development should have no negative impact on third party or neighbouring properties. In addition, only single storey bungalow (including attic accommodation) type houses will be allowed in such backland locations. As this predates the development plan, I do not consider it necessary for the applicants to be family members as required by RH14. The current applicants are the landowners of the property for past 13 years.

The development has minimal impact on the adjoining third party properties. The dormer bungalow element overlooks a shed to the rear and there is no view into

private rear garden areas from the first floor. As regards Chapter 17 of the development plan which addresses Development Standards, the development complies with Section 17.4.8 relating to Extensions to Dwellings.

I acknowledge the planning authority attached a condition to the parent permission, **1352/83**, i.e. Condition No. 6, to restrict the use of cottage and the bungalow extension to be used as ONE DWELLING UNIT ONLY. However, I consider the permitted extension was sizable compared to the footprint of the cottage, and with both floor areas combined, it represents a very large single dwelling unit. Currently two families live comfortably within two separate properties, and I consider this to be a sustainable form of residential development, and I recommend the Board look favourably on retaining the two separate units which have existed for a considerable length of time with no planning enforcement issues arising, or no third party objections arising from the planning application to retain the subdivision.

Both properties are fully serviced and do not require private sewage treatment. I consider the development to be in compliance with the general planning guidelines of the development plan.

7.5 Roads/ Traffic

Both dwellings have their own separate entrances. The cottage is accessed off New Road, and the dormer dwelling is accessed from the R403. There are adequate sightlines in both directions, and on-site parking. In terms of the cottage, traffic approaching the site will approach slowly due to the proximity of the New Road junction with the R403 relative to the entrance to the cottage.

The planning application includes proposals to increase the height of the roadside boundary wall along the front of the dormer bungalow to 1.5metres which will include closing off the existing pedestrian and vehicular access to the house from the R403. A new entrance is to be constructed at the western end of the roadside boundary, which is more acceptable in terms of traffic safety and will ensure a reduction of surface water off the R403 occurring onto the front curtilage of the dwelling.

7.6 Other Issues

It is proposed to convert the garage into the playroom associated with the dormer bungalow. I recommend a condition be attached that the use of the garage/

playroom will be solely incidental to the domestic use of the main dwelling, and no commercial activities will occur on site given the enforcement history associated with the garage and the yard area to the west of residential curtilage.

I am concerned the applicant has applied to close off the existing access points to the R403 and create a new entrance into a large 'carparking area'. It will enhance the overall appearance of the property from the R403 with the inclusion of a new roadside boundary wall. However, given the planning enforcement history associated with this yard area and the proposed changes to the overall site, I would be concerned about the potential for unauthorised commercial activities. Therefore the domestic use of the overall site area should be reinforced by way of condition.

7.7 Appropriate Assessment

Having regard to the nature and scale of the proposed development, nature of the receiving environment and distances to the nearest European sites, I am satisfied that 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 a European site.

8.0 Recommendation

- 8.1. Having inspected the site and considered the content of the appeal file, I recommend the planning authority's decision to refuse be overturned by the Board.

9.0 Reasons and Considerations

Having regard to the planning history of the subject site, and that the extension to the rear of the cottage was granted under planning reference 1352/83, the availability of public water supply and sewerage facilities to serve the development, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the visual or residential amenities of the area, would be acceptable in traffic safety terms and would be in accordance with the provisions of the current Kildare County Development Plan and with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>(i) The use of the garage shall be incidental to the use of the dwelling house on site and it shall not be used for the keeping of animals or any commercial purposes.</p> <p>(ii) The yard/ carparking area to the west of the bungalow shall be exclusively used for domestic purposes only.</p> <p>Reason: In the interests of clarity.</p>
3.	<p>The entrance gates to the proposed house shall be set back not less than 3 metres and not more than 6 metres from the edge of the public road. Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees and shall not exceed 1 metre in height.</p> <p>Reason: In the interest of traffic safety</p>
4.	<p>All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> <p>Reason: To ensure adequate servicing of the development, and to prevent pollution.</p>

6.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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 the 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.</p> <p>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.</p>
----	---

Caryn Coogan

Planning Inspector

04/08/2020