



An
Bord
Pleanála

Inspector's Report

ABP-307175-20

Development

The development consists of amendments to previously approved planning permission no. 17/64 including changes to the site layout plan, refurbishment and extension of the existing dwelling including plan and elevational changes, change of house types on Site Nos. 5 and 6 and all associated site works

Location

Kilkenny Street, Freshford, Co. Kilkenny

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

19/683

Applicant

Cliodhna O'Reilly

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party v Grant of Permission

Appellant(s)

Edward & Eileen Kennedy

Observer(s)

None

Date of Site Inspection

21.07.2020

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located in Freshford village in north Co. Kilkenny.
- 1.2. The site is on the north side of Kilkenny Street/R693 in a relatively central location within the village. There is a detached house set back slightly from the footpath with associated outbuildings to the rear. There is a high boundary wall along the footpath either side of the house. Apart from the house and outbuildings to the south east area of the property most of the property is undeveloped grassed land. The Nuenna River runs along the northern boundary of the property. Development in the vicinity of the site is mainly residential though there is a service station/associated shop and a public house within 50 metres to the west of the site.
- 1.3. The site has a stated area of 0.22 hectares.

2.0 Proposed Development

- 2.1. The planning application is for amendments to P.A. Reg. Ref. 17/64 to include:
 - Changes to the site layout
 - Refurbishment and extension of the existing house including plan and elevational changes
 - Change of house types on Site Nos. 5 and 6.
- 2.2. In addition to standard planning application plans and particulars the application was accompanied by a brief cover letter and an Architectural Heritage Assessment Report.
- 2.3. Further information was submitted in relation to, inter alia, revised floor plans and elevations for House No. 6, alterations to the existing house and a copy of the Archaeological Assessment Report submitted under P.A. Reg. Ref. 17/64.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 9 no. conditions including compliance with conditions of the parent permission, development contributions, external finishes, Irish Water connection, archaeological monitoring and surface water disposal.

3.2. Planning Authority Reports

3.2.1. Planning Reports dated 14.11.2019 and 26.03.2020 are the basis of the planning authority's decision. It was considered that, having regard to the policies and objectives of the County Development Plan, the proposed development would not seriously injure the amenity of the area and would be in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

Architectural Conservation Officer – Further to the further information response, no objection subject to conditions relating to the lowering of the front side wall, natural roof slates and implementation of the recommendations of the Archaeological Assessment Report.

Road Design – No objection subject to a condition relating to previous conditions.

3.3. Prescribed Bodies

Irish Water – Further information recommended. A revised site layout is required showing the existing public sewer and its wayleave located in public areas only.

Inland Fisheries Ireland – Observations and recommendations made.

Department of Culture, Heritage and the Gaeltacht – Observations are made. In relation to archaeology there is no objection subject to a condition relating to archaeological mitigation. In relation to nature conservation, concern is expressed in relation to appropriate assessment.

3.4. Third Party Observations

- 3.4.1. One submission was received from Edward and Eileen Kennedy, Kilkenny Street. The issues raised are largely covered by the grounds of appeal.

4.0 Planning History

- 4.1. There has been one previous valid application on site:

P. A. Reg. Ref. 17/64 – Permission was granted for demolition of outbuildings and construction of 14 no. houses (reduced to 9 no. by way of the further information response and the decision to grant). An application for leave to appeal that decision (ABP-300085) was granted though the appeal itself (ABP-300451-17) was subsequently withdrawn.

5.0 Policy Context

5.1. Kilkenny County Development Plan 2014-2020

- 5.1.1. Freshford is included in the ‘smaller towns and villages’ category in the county settlement hierarchy and the site is within the settlement boundary. There is no land use zoning in the village and development proposals within the boundary are considered on their merits against the policies and objectives contained in the Plan. The Freshford Local Area Plan 2005 expired in 2011 but Section 3.3.5.1 (Expired LAPs) states the plan contains a significant amount of information on the natural and built heritage and other planning issues and will be used as a supplementary guidance document. The site was zoned ‘residential’ within the development boundary of the 2005 Local Area Plan.
- 5.1.2. Section 8.3.6.2 (Freshford ACA) describes the Architectural Conservation Area in the village but its boundary does not include the site subject of the application.

5.2. Natural Heritage Designations

- 5.2.1. The closest heritage area is the Natura 2000 site, River Barrow and River Nore SAC, approx. 3.4km to the east.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal are submitted by Edward and Eileen Kennedy, Kilkenny Street, Freshford (the adjacent property to the east). The main points made can be summarised as follows:

- The Board granted the appellants leave to appeal the original grant of permission on site on the basis that House Nos. 5 and 6 would overlook the appellants' property and reduce the value of their land.
- The appeal was withdrawn after the applicant/applicant's architect agreed in writing to change the houses to single storey houses and re-apply for permission.
- The current application is again for two-storey houses in contravention of the agreement and the appellants were dismayed the planning authority overlooked the agreement when adjudicating on the application.
- The appellants were not afforded justice because the agreement was overlooked by the planning authority. The houses will overlook the property and reduce the value of the appellants' land.

6.2. Applicant's Response

- 6.2.1. None received.

6.3. Planning Authority Response

- 6.3.1. The main points made can be summarised as follows:

- Regarding the statement in the grounds of appeal that the planning authority overlooked the agreement when adjudicating on the application the planning authority planning report includes a section titled 'Third Party Submissions' which referenced the content of the submission.
- The planning authority planning report includes a section titled 'Alterations to Houses 5 & 6'. This includes reference to overlooking of the appellants' property from an east facing window at first floor level. Further information was sought on this basis. In response, the window was removed.

6.4. Observations

6.4.1. None.

6.5. Further Responses

6.5.1. None.

7.0 Assessment

The main issues are those raised in the grounds of appeal and 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:

- Parent Permission
- Amendments to Site Layout
- Amendments to Existing House
- Change of House Types on Site Nos. 5 and 6
- Appropriate Assessment

7.1. Parent Permission

- 7.1.1. The current application seeks permission for amendments to the parent permission on site, P.A. Reg. Ref. 17/64. Permission was initially sought for demolition of outbuildings and construction of 14 no. houses on a 0.83 hectare site. Further information was sought in relation to, inter alia, the layout of the foul sewer, a record of the buildings proposed for demolition, test excavations for archaeology, a revised site layout excluding all residential units and essential infrastructure from within the flood zone, house design and building lines, open space, appropriate assessment, retention of some of the existing outbuildings, an Architectural Heritage Impact Assessment and sightlines.
- 7.1.2. Following receipt of the further information response, which included a substantially different site layout and a reduction in the number of proposed units to ten, the planning authority decided to grant permission (with Condition 3 requiring two semi-detached houses to be replaced by a single house). An application from Edward and Eileen Kennedy for leave to appeal the planning authority decision (ABP-300085-17) was granted though the appeal itself (ABP-300451-17) was subsequently withdrawn.

7.2. Amendments to Site Layout

- 7.2.1. Alterations to the site layout includes amendments to the car parking provision to the rear of House Nos. 1 and 2, to the front/side of No. 5 and the front of No. 6 including a reduction in the number of spaces provided. Two spaces per house are still provided plus an additional two visitor spaces. There is a reduction in the rear private open space area of No. 3. The footprint and curtilages of Nos. 5 and 6, and the rear curtilage of the existing house, are slightly altered.
- 7.2.2. Adequate car parking provision is retained on site. The public open space in the immediate vicinity of these car parking amendments is altered but only to a relatively minor degree. The private open space to the rear of No. 3 is approx. 80sqm which is more than the 60-75sqm required for private open space in the County Development Plan 2014-2020 for a four bedroom house. I also note that alterations to the curtilages of Nos. 3, 5, 6 and the existing house are partially affected by Condition 3(c) of the parent permission which requires a pedestrian access lane to be incorporated into adjoining gardens.

7.2.3. I consider the alterations to the site layout as outlined in Section 7.2.1 are relatively minor in the context of the permitted development and would have no adverse impact on the amenity of future occupants.

7.3. Amendments to Existing House

7.3.1. Though the existing house on site was within the site boundary of P.A. Reg. Ref. 17/64 its refurbishment or extension was not proposed as part of that planning application. The application stated that the main house and its annex to the rear was to be retained and its subsequent refurbishment addressed by way of a separate planning application. However, the application did provide for the demolition of the outbuildings. As part of the further information request for P.A. Reg. Ref. 17/64 an inspection, survey and photographic record was requested for the buildings proposed for demolition. It was requested that some outbuildings be retained as the planning authority considered that their presence in the development would play a role in maintaining some of the 19th/20th Century fabric of the town. An Architectural Heritage Assessment Report was submitted as part of the further information response. Some outbuildings would be retained and form part of a separate application for the refurbishment and development of the existing house. Inter alia, Condition 19(d) required the retention of outbuildings A, B and C (the closest outbuildings to the rear of the house).

7.3.2. The existing house on site is not a protected structure but it is recorded in the National Inventory of Architectural Heritage (NIAH Ref. No. 12305017). It is described as a detached five-bay two-storey house dating from c.1875 and renovated c.1950. According to the appraisal, it is a well appointed middle-size house of balanced appearance retaining most of the original form and massing together with substantial quantities of the early fabric to both the exterior and the interior, thereby making a positive impression on the historic quality of the streetscape. (The Architectural Heritage Assessment Report submitted with the application states that there are very few original features intact in the main house save for the main stair and the drawing room). The existing outbuildings are not mentioned.

7.3.3. The existing house has a stated floor area of 248sqm with a height of approx. 7.5 metres. Survey drawings of the house and the closest outbuildings have been submitted. The house footprint is one room deep along Kilkenny Street and the annex

to the rear/side and the outbuildings form a courtyard area to the rear. The extent of works proposed to the interior are shown on the proposed floor plans. The existing shed (Outbuilding A), which physically connects the house and the most significant outbuilding (Outbuilding B), is to be demolished and replaced by a glazed gallery linking to a new gallery which runs along the western side of the courtyard and connects the main part of the existing house addressing Kilkenny Street to the kitchen/dining room and living room that it is proposed to locate in renovated and reroofed Outbuilding B, which is considered to be the primary outbuilding, though not in particularly good physical condition, and which lies parallel to the main house. It was initially proposed to demolish Outbuilding C, but this was retained as an outhouse in the further information response. At first floor level the roof of the annex is to be raised for adequate head height. This timber clad area has been slightly set back from the main wall on foot of the further information request. Externally, it is proposed to remove a front elevation window which detracts from the symmetry of the elevation and to slightly recess the position of the existing opes on the western elevation to indicate their location. A 900mm high railing on a stone plinth is proposed along the roadside boundary to the front.

7.3.4. I consider the development and refurbishment of this house, and retention of Outbuildings B and C, to be a positive development for the streetscape and the urban fabric of the village. The retention of Outbuilding C would retain the courtyard layout. I consider that the planning authority's condition requiring natural Irish or Welsh slate to the 19th Century buildings is appropriate. Having regard to the foregoing I consider that the proposed amendments to the existing house, as set out in the further information response, are acceptable.

7.4. Change of House Types on Site Nos. 5 and 6.

7.4.1. This issue is the reason for the grounds of appeal. The appellants state that, after they were granted leave to appeal the parent permission, they subsequently withdrew the appeal as it was agreed with the developer/developer's agent that a revised application would be made for single-storey houses on Site Nos. 5 and 6. However, the application is for two-storey houses in contravention of that agreement.

- 7.4.2. Any agreement between the appellants and the applicant is a matter between the two parties and is not a material planning consideration to be taken into account by the planning authority, or the Board on appeal.
- 7.4.3. There are no first floor rear or side elevation windows proposed in the revised house types. The section drawing show the rear elevation rooflights to be at high level. No overlooking impact would occur to the adjacent property to the east as a result of the development. In addition, I do not consider any undue shadowing or overbearing impact would occur to the adjacent property.
- 7.4.4. Based on material planning considerations I consider the revised house types are acceptable and would not have any undue impact on the residential amenity of the adjacent property to the east.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the development proposed 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 (the Nuenna River being approx. 40 metres north of the boundary of the site subject of this planning application), 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. 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 Kilkenny County Development Plan 2014-2020, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed amendments to the site

layout would be relatively minor in the context of the permitted development, the refurbishment and extension of the existing house would be a positive development for the streetscape and the urban fabric of the village and the revised house types proposed would have no undue adverse impact on the residential amenity of the adjacent property. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be 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 05.03.2020, 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. The development shall be carried out and completed in accordance with the relevant terms and conditions of the permission granted under planning register reference 17/64, except as amended in order to comply with the conditions attached to this permission.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. All 19th Century buildings shall be roofed in natural slate, Irish or Welsh, new or salvage. Prior to the commencement of the refurbishment and extension works to the existing house, samples and detail of same shall be submitted for the written approval of the planning authority.

Reason: In the interest of visual amenity and conservation of the built heritage setting.

5. 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

18.08.2020