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<b>Development</b>	Retention permission for revisions to development granted planning permission under P74/279 including existing revised location and orientation of dwelling, revised house design.
<b>Location</b>	Batterjohn, Kiltale, Dunsany, Co. Meath.
<b>Planning Authority</b>	Meath County Council.
<b>Planning Authority Reg. Ref.</b>	RA/191025
<b>Applicants</b>	Cormac and Kathleen O'Reilly
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission with Conditions
<b>Type of Appeal</b>	First Party Appeal Against Conditions
<b>Appellant(s)</b>	Cormac and Kathleen O'Reilly
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> September 2020

**Inspector**

Brendan Coyne.

## 1.0 Site Location and Description

The subject site (0.2 ha) is located on the southern side of a narrow rural road near a junction with the L2207, in the rural townland known as Kiltale, c. 6km west of Dunshaughlin in County Meath. The site contains a detached 1.5 storey dwelling which incorporates a domestic garage to its rear. The roof profile of the dwelling is pitched incorporating 1 no. rooflight on its front roof slope, 2 no. rooflights on its rear roof slope and 1 no. window ope on both side elevations at first floor level. The elevation finishes of the dwelling are rendered. The layout of the dwelling is L-shaped with its front elevation facing in a north-westerly direction. The front boundary of the site is defined with a low-rise rendered block wall. Mature trees and hedgerow define the eastern side boundary and a timber post and rail fence defines the western side boundary. The ground level of the site slopes upwards gently in a southerly direction. Adjoining lands to the eastern side and rear are agricultural / greenfield and adjoining lands to the west comprise a sand quarry. The surrounding area is characterised by agricultural land and dispersed one-off rural housing.

## 2.0 Proposed Development

### 2.1.1. Application as lodged on the 02/08/2019 -

**Retention Permission** sought for revisions to the development granted planning permission under P.A. Ref. P74/279 comprising the following;

- Revised location and orientation of the dwelling,
- Revised house design including the provision of first floor habitable accommodation,
- Revised internal layout at ground floor level,
- Revised domestic garage attached to the rear of the dwelling,
- Revised external windows,

**Permission** sought for the following;

- Relocation and installation of a replacement wastewater treatment tank and polishing filter,
- All ancillary site works.

2.1.2. Further Information submitted on the 16/03/2020 includes;

- Revised floor plan indicating the first floor as domestic storage space.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

3.1.1. Meath County Council granted permission for the proposed development and development seeking retention permission, subject to 6 no. Conditions. Noted Conditions include:

No. 1 The development shall be retained and completed in accordance with the plans and particulars lodged with the Planning Authority on the 02/08/2019 and 16/03/2020 except where conditions hereunder specify otherwise.

Reason: In the interest of the proper planning and development of the area

No. 5 The first floor of the dwelling shall be used for storage and ancillary to the dwelling.

Reason: In the interest of building control.

#### 3.2. **Planning Authority Reports**

3.2.1. **Planning Reports** (24<sup>th</sup> September 2019 and 06<sup>th</sup> April 2020)

3.2.2. Initial Report (24<sup>th</sup> September 2019)

- The attic space of the dwelling (80 sq.m.) has been converted to provide habitable accommodation.
- As per the section drawing submitted, the converted attic space has a maximum head height of 2.21 metres. This does not meet the current Building Regulation standards which requires a head height of 2.4m over 50% of the gross floor area.
- The applicant was invited to submit further information which considers the proposal in the context of the Building Control (Amendment) Regulations, S.I. No.

9, 2014. Where such drawings cannot be provided indicating compliance with the Regulations, the Planning Authority would consider the extension at first floor level as storage space only. Where this is the case, the applicant was requested to submit revised drawings re-labelling the first-floor attic as 'storage space only'.

- In response to the additional information request, the applicant submitted a revised floor plan indicating the first-floor area as storage space only.
- The design of the converted garage area and first floor accommodation is visually acceptable and would not detract from the character or visual amenity of the area.
- The site assessment for the proposed wastewater treatment system indicates favorable site conditions.

### 3.2.3. Other Technical Reports

The Planning Report states that none were received.

## 4.0 Planning History

**P.A. Ref. P74/279** Permission granted in July 1974 for a dwelling house, as detailed by the appellants.

Note: Details of this permission are not recorded on the Council's planning application database and have not been submitted with the planning application and appeal.

## 5.0 Policy and Context

### Development Plan

Meath County Development Plan 2013-2019 is the statutory plan for the area.

Section 11.2.4 sets out Development Management Guidelines and Standards for House Extensions.

Appendix 15 The Meath Rural Design Guide – relevant guidelines include;

Section 5.5 Extensions, Porches & Conservatories

Section 5.7 Garages

## 5.1. Other Relevant Government Guidelines

Development Management, Guidelines for Planning Authorities (2007).

## 5.2. Natural Heritage Designations

- 5.2.1. The River Boyne and River Blackwater SAC (Site Code 002299) and SPA (Site Code 004232) is located 7.3 km to the north-west of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. An appeal was received from James Shanley & Associates Planning Consultants, representing the first-party appellants Cormac and Kathleen O'Reilly, against Condition Nos. 1 and 5 of the decision made by the Planning Authority to grant permission for the proposed development. The following is a summary of the grounds of appeal.

- The entire first floor of the dwelling has been used as habitable space since the construction of the dwelling c.1976 and is therefore 'statute barred'.
- The further information request made by the Planning Authority relates to the Building Regulations Technical Guidance Document (TGD) Part F – Ventilation (1997), which first came into effect as a 'suggested height for habitable rooms', as detailed in Diagram 5 of this TGD.
- The existing attic space was constructed prior to the introduction of the Building Regulations Technical Guidance Documents. It would have been impossible for the builders of the property to pre-empt the Building Regulations TGD's, which were published in 1991, 1997, 2002 and 2009, more than 10 years after the construction of the dwelling.
- The applicants were not at any stage afforded the opportunity to present any evidence or documentation to Meath County Council to indicate the status of the property prior to the introduction of the Building Regulations.

- The further information request calls into question a substantial number of conveyances carried out throughout the country over the past and sets an unfair and unreasonable precedence for similar type of development going into the future.
- The requirement that a building constructed c. 1976 to comply with Building Control Regulations introduced in 2014 or any other Regulations, does not set a fair and reasonable precedence.
- The property was originally marketed and sold by Royal Auctioneers as a 'substantial dormer bungalow' and purchased by the owners on this basis. A copy of the original advertising flyer advertising the sale of the dwelling (dated April 1980) is submitted.
- The vendor solicitors Malone and Martin Solicitors confirm the bona fides of Mr. Patrick Hayes Building Instructor who certified the property as being compliant with the conditions of P.A. Ref. P.74/279 which related to the subject dwelling, on the 30<sup>th</sup> July 1980 and prior to the introduction of the Building Regulations in 1991. Document from Malone and Martin Solicitors (dated May 1980) and statutory declaration from Patrick Hayes (dated July 1980) confirming the above submitted.
- A verbal assurance was received from Royal Auctioneers that planning permission for the dormer section of the property was in order. Copy of handwritten note of this conservation, dated May 1<sup>st</sup> 1980 submitted.
- The appeal decision will have serious financial implications for the appellants. They had hoped to sell the property to downsize. If the appeal is not successful, then the property will have consent for 1 no. bedroom and 1 no. study / home office only. To raise the roof in order to comply with current Building Regulations would be very expensive.

## 6.2. **Planning Authority Response**

6.2.1. The Planning Authority's response is as follows;

- The applicants did not submit any information in relation to the first-floor space being used as habitable space since the construction of the dwelling in 1976.

- The applicants responded to the further information request with revised drawings indicating that the first-floor space shall be used as storage only.
- The first-floor space does not comply with current Building Regulations and the first floor did not receive permission prior to its construction.
- The Planning Authority is satisfied that all matters outlined in the submission were considered in the course of its assessment of the planning application, as detailed in the Planning Officer's report dated 24<sup>th</sup> September 2019 and 6<sup>th</sup> April 2020.

### 6.3. **Observations**

None received.

### 7.0 **Assessment**

- 7.1.1. This is a first party appeal against Condition Nos. 1 and 5 of Meath County Council's notification of decision to grant planning permission for the proposed development and development proposed to be retained, in respect of development permitted under P.A. Ref. RA/191025. Having reviewed the proposal, I am satisfied that the appeal can be considered under the provisions of Section 139 of the Planning and Development Act 2000 (as amended). This assessment will therefore be confined to the specific appeal of Condition Nos. 1 and 5 of the Planning Authority's decision. I consider, therefore, that the main issues for consideration in this appeal relate to the appropriateness of Condition Nos. 1 and 5. These are addressed below.

### 7.2. **Appropriateness of Condition Nos. 1 and 5**

- 7.2.1. As detailed in Section 3.1 above, Condition No.1 of the Planning Authority's decision to grant permission requires that the development be retained and completed in accordance with the plans and particulars lodged with the Planning Authority on the 02/08/2019 and 16/03/2020, except where Conditions set out in the Schedule of Conditions specify otherwise. Condition No. 5 requires that the first floor of the dwelling be used for storage and ancillary to the dwelling. The Applicants contest the requirements of these Conditions, as set out in Section 6.1 above.



- 7.2.2. The Planning Authority in its first report details that, as per the section drawing submitted, the converted attic space has a maximum head height of 2.21 metres. The planning report considered that the converted attic to habitable accommodation does not meet current Building Regulations which requires a head height of 2.4m over 50% of the gross floor area. The Planning Authority invited the applicants to submit further information which considers the proposal in the context of the Building Control (Amendment) Regulations 2014, S.I. No. 9/2014. The further information request stated that where drawings cannot be provided indicating compliance with the Regulations, the Planning Authority would consider the extension at first floor level as storage space only. Where this is the case, the applicant was requested to submit revised drawings re-labelling the first-floor attic as 'storage space only'. In response to the further information request, the applicants submitted a revised floor plan indicating the first-floor of the dwelling as a 'domestic storage area'. This was deemed acceptable by the Planning Authority and Condition Nos. 1 and 5, relevant to this issue, were imposed accordingly.
- 7.2.3. Both the Planning Authority and the appellants refer to the original planning application for the subject dwelling, granted permission under P.A. Ref. P74/279. No further details of this permission have been provided with the application or appeal and are not available on the Council's online planning search database. In the absence of plans or particulars with regards the dwelling granted permission under P.A. Ref. P74/279, I am unable to ascertain that permission was granted for the 'dormer section of the property', as put forward by the appellants. Notwithstanding this, I refer the Board to Section 7.8 of the *Development Management - Guidelines for Planning Authorities* (2007) which states that it is inappropriate in development management to attach planning permission conditions which are the subject of more specific controls under other legislation or are directly regulated by other statutes, unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means. The Guidelines detail that the existence of a planning condition, or its omission, will not free a developer from his or her responsibilities under other codes and further advise that the Building Regulations require certification by a developer's design team. Having regard to the context of the site and surrounding area and the scale and design of the development proposed to be retained, I have no

reason to consider that the proposal would be contrary to the proper planning and sustainable development. The development proposed to be retained is visually acceptable and does not impact on the amenity of the surrounding area. On this basis, I consider that that the Planning Authority should not have imposed a condition requiring that the first floor of the dwelling be used as storage space only on the grounds that its floor to ceiling height does not comply with the Building Regulations. It is outside the remit of this planning appeal to determine whether or not the floor to ceiling height of the first floor area complies with the Building Regulations and given the stated date of construction of the dwelling (c. 1976), whether or not the current Building Regulations should apply to the development proposed to be retained. The onus is on the First Party to comply with the relevant standards set out in the Building Regulations. I recommend, therefore, that the Planning Authority be directed to remove Condition No. 5.

- 7.2.4. With regard the wording of Condition No. 1, I consider that the wording of this condition should remain unchanged by reason that the proposed development and development proposed to be retained was assessed in accordance with the plans and particulars lodged with the Planning Authority on the 02/08/2019 and the 16/03/2020. The applicants themselves submitted the revised plans and particulars by way of further information response, detailing the first floor of the dwelling as a domestic storage area. The removal of Condition no. 5, as imposed by the Planning Authority, would negate the restrictions of this Condition. As detailed above, the onus is on the First Party that the development proposed to be retained complies with the Building Regulations. I recommend, therefore, that the wording of Condition No. 1 remain unchanged.

### **7.3. Screening for Appropriate Assessment**

- 7.3.1. The closest Natura 2000 site to the appeal site is the River Boyne and River Blackwater SAC (Site Code 002299) and SPA (Site Code 004232) which is located 7.3 km to the north-west of the site. Taking into consideration the nature and scope of the proposed development and development proposed to be retained , the wastewater treatment system proposed to serve the existing dwelling, the details provided on the site characterisation form and the existing residential and farm development in the immediate vicinity, I am of the opinion that no appropriate assessment issues arise

and that the proposed development and development proposed for retention would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## **8.0 Recommendation**

8.1. I recommend that the Board consider the appeal in the context of Section 139 of the Planning & Development Act 2000 (as amended). Arising from my assessment of the appeal case, I recommend that the Planning Authority be directed to remove Condition No. 5 from its decision to grant permission for application reference number RA/191025 and to re-number the other Conditions accordingly, for the Reasons and Considerations set out below. The wording of Condition No. 1 should remain unchanged.

## **9.0 Reasons and Considerations**

- 9.1.1. Having regard to the nature and scale of the proposed development and development proposed for retention, it is considered that the removal of Condition No. 5 would be in accordance with Section 7.8 of the Development Management Guidelines for Planning Authorities (2007) which states that it is inappropriate in development management to attach planning permission conditions which are the subject of more specific controls under other legislation or are directly regulated by other statutes, unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be dealt with effectively by other means. Condition No. 5 requires that the first floor of the dwelling be used for storage, in the interest of Building Control. It is considered inappropriate, in this instance, to attach a condition relating to matters regulated by the Building Regulations. The proposed development and development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity and, therefore, would be in accordance with the proper planning and sustainable development of the area. The onus is on the First Party that the development proposed for retention complies with the Building Regulations.
- 9.1.2. The wording of Condition No. 1 should remain unchanged by reason that the proposed development and development proposed for retention was assessed in accordance

with the plans and particulars lodged with the Planning Authority on the 02/08/2019 and the 16/03/2020.

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Brendan Coyne  
Planning Inspector

23<sup>rd</sup> September 2020